

Pat. O'gilby THE
LAW
CONCERNING
ELECTION
OF
Members for *Scotland*,
To Sit and Vote in the
Parliament of Great-Britain.

S H E W I N G,
The ORDER, and what is necessary to be Observed in ELECTING the P E E R S, and COMMISSIONERS for Shires and Burghs,
The D U T Y of the Officers concern'd in Returning the *Summons of Parliament*, with other Matters relating to Members of Parliament, according to the Statutes and Laws in the North and South Parts of this United Kingdom.

Together with
The Privilege belonging to Parliament-Men.

Publish'd for the Use of these concern'd in the Elections for *Scotland*,

B Y
JOHN SPOTSWOOD of That-Ilk, Advocate.

Edinburgh: Printed for John Vallange. 1710.



T H E
P R E F A C E.

THAT I may acquit my self aright in the undertaking to teach the Laws of Scotland, I'm under an indispensable Duty to study the several Parts and Titles of it, the more pointedly, and to put my Observations and Extracts, made in my reading, into some Order; and that my Students may more easily conceive, and better understand and remember what is taught, I endeavour to explain the divers Matters of Law, in a scientifick Method, which is a very difficult Work, as the Learned in the Law do well know.

Of the several Dissertations in this Kind I have composed, the Essay I present you with, having been occasionally communicated to some Friends, they were of Opinion that it ought not to be confin'd to private Students; seeing they thought it wou'd be useful, to the Peers, Freeholders, and others concern'd in making Election of Members to the Parliament, who from it might receive Knowledge of their Power and Duty in this Behalf. Wherefore, in Compliance, I have revis'd and fitted it for the Publick, wishing it may answer the End, and more especially that it may be serviceable to the Honourable the House of Commons, in determining the controverted Elections of the Members for North-Britain; which I hope it will, because nothing of the Laws and Customs of Scotland concerning Elections, has hitherto been digested and published, and is now necessary, when by Stat. 5. An. 8. it is declared, That none can elect or be elected a Representative for any Shire or Burgh in Scotland to the Parliament of Great-Britain, except such as are capable by the Laws of Scotland.

The P R E F A C E.

I have inserted much of the Law of England concerning Elections upon account of its Affinity with our Law; and because, in Cases of this sort, not defin'd by our own Customs, we may expect to be judged thereby: Intending also, That the Students of the Laws shou'd here get a Glance of the Law of England, which I doubt not but will be agreeable.

I thought it unnecessary to give an Explication of the very few English Terms of Law, in this Treatise; which at present would ha' been a naked Excerpt out of the Lexicons the Reader may consult at his own Leisure; having in view a more fit Occasion to explain these difficult Terms of Art, by equipollent Terms or Parallelisms in our Law, without which the Scots Student can never apprise them.

To distinguish the Citations of the several Laws, please know That these marked thus, Stat. 6. An. 8. and Stat. 7. Hen. VI. 15. and the like, are English, and signify, the Eighth Statute made in the Sixth Year of the Reign of Queen Anne; and the Statute made in the Seventh Year of the Reign of King Henry the Sixth, Chapter Fifteenth, or Statute Fifteenth. For in England, the Parliaments are marked by the Number of the Year of the Reign of the Queen or King. The Laws of Scotland are cited by the Number of the Acts, the Number of the Parliament and Session thereof, holden by a particular King or Queen; as Act 114. Parl. 11. James VI. Or Act 5. Parl. 1. Sess. 2. Charles II. To these I sometime add the Year of God, that the Time when the Law was enacted and introduc'd may be known.

In the Title concerning the Election of Peers, the Printer in the Author's Absence omitted the List of the Nobility of Scotland which in Supplement is here subjoin'd.

D U K E S.

Eldest Sons.

<p>A N N A, Dutchess of Hamilton. James Hamilton Duke of Hamilton. Anne Scot, Dutchess of Buccleugh. Charles Lenox, Duke of Lenox. George Gordon, Duke of Gordon.</p>	<p>} Marquis of Clidsdale. } Earl of Dalkeith. } Earl of Darnly. } Marquis of Huntly.</p>
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James,

The PREFACE.

<i>James Douglas, Duke of Queensberry.</i>	<i>Earl of Drumlanrig.</i>
<i>John Campbell, Duke of Argyle.</i>	<i>Marquis of Lorne.</i>
<i>Archbald Douglas, Duke of Douglas.</i>	<i>Earl of Angus.</i>
<i>John Murray, Duke of Athole.</i>	<i>Marquis of Tullibardine.</i>
<i>James Grahame, Duke of Montrose.</i>	<i>Marquis of Grahame.</i>
<i>John Ker, Duke of Roxburgh.</i>	<i>Marquis of Cessford.</i>

MARQUISSES.

John Hay, Marquis of Tweeddale.
William Ker, Marquis of Lothian.
William Johnston, M. of Annandale.

Eldest Sons.

Lord Yester.
Lord Nembottle and Fiddburgh.
Lord Johnston.

E A R L S.

John Lindsay, Earl of Crawford.
John Hay, Earl of Errol.
William Keith, Earl Mareschal.
John Southerland, Earl of Southerland.
John Areskin, Earl of Marr.

Eldest Sons.

Lord Lindsay.
Lord Hay.
Lord Keith.
Lord Strathnaver.
Lord Areskin.

— Grahame Earl of Airth and
Monteith, conjoin'd to Montrose.

Lord Kilpont and Kilbride.

John Lesley, Earl of Rother.
James Douglas, Earl of Morton.
David Areskin, Earl of Buchan.
William Cuninghame, Earl of Glencairn.
Alex. Montgomery, Earl of Eglinton.
John Kennedy, Earl of Cassils.
John Sinclair, Earl of Caithness.
Charles Stuart, Earl of Murray.
William Maxwell Earl of Nithsdale.
George Seton, Earl of Winton.
George Livingston, Earl of Linlithgow.
Alexander Home, Earl of Home.
Famles Drummond, Earl of Perth.

Lord Lesley.
Lord Aberdour.
Lord Auchterhouse.
Lord Kilmaurs.
Lord Montgomery.
Lord Kennedy.
Lord Berrendale.
Lord Down.
Lord Maxwell.
Lord Seton.
Lord Livingston.
Lord Dunglass or Coldingams.
Lord Drummond.

— Earl of Dunbar.

William Fleeming Earl of Wigton.
John Lyon, Earl of Strathmore.
Thomas Hamilton, Earl of Abercorn.
Alexander Areskin, Earl of Kelly.
Thomas Hamilton, Earl of Haddington.
James Stuart, Earl of Galloway.
William Mackenzie, Earl of Seaforth.
John Maitland, Earl of Lauderdale.
— Hay, Earl of Kinnoul.

Lord Fleeming.
Lord Lyon or Glames.
Lord Pasley.
Lord Pittenweem.
Lord Binning.
Lord Gorleis.
Lord Mackenzy or Kintail.
Lord Maitland.
Lord Duplin.

The PREFACE.

<i>James Campbell, Earl of Loudoun.</i>	Lord <i>Machlin.</i>
<i>F. Creighton, Countess of Dumfries.</i>	Lord <i>Creighton.</i>
<i>Alexander, Earl of Striveling.</i>	Lord <i>Alexander.</i>
<i>Thomas Bruce, Earl of Elgin.</i>	Lord <i>Kinloss.</i>
<i>James Carnegie, Earl of Southesk.</i>	Lord <i>Carnegy.</i>
<i>Charles Stuart, Earl of Traquair.</i>	Lord <i>Linton.</i>
<i>Ker, Earl of Ancrum.</i>	Lord <i>Nisbet.</i>
<i>David Weems, Earl of Weems.</i>	Lord <i>Elcho.</i>
<i>William Ramsay, Earl of Dalhousie.</i>	Lord <i>Ramsay.</i>
<i>James Ogilvy, Earl of Airly.</i>	Lord <i>Ogilvy.</i>
<i>John Ogilvy, Earl of Findlater.</i>	Lord <i>Desford.</i>
<i>Robert Dalziel, Earl of Carnwarth.</i>	Lord <i>Dalziel.</i>
<i>David Lesley, Earl of Leven.</i>	Lord <i>Balgony.</i>
<i>Lionel Talmash, Earl of Dysert.</i>	Lord <i>Huntingtoun.</i>
<i>James Maul, Earl of Panmure.</i>	Lord <i>Maul and Breichen.</i>
<i>Charles Hamilton, Earl of Selkirk.</i>	Lord <i>Daive.</i>
<i>David Carnegie, Earl of Northesk.</i>	Lord <i>Rosehill.</i>
<i>Alexander Bruce, Earl of Kincardin.</i>	Lord <i>Bruce.</i>
<i>Colin Lindsay, Earl of Belecarras.</i>	Lord <i>Cummerlane.</i>
<i>Archbald Douglas, Earl of Forfar.</i>	Lord <i>Wendal.</i>
<i>J. Middleton, Earl of Middleton.</i>	Lord <i>Clermont.</i>
<i>Charles Gordon, Earl of Aboyn.</i>	Lord <i>Glenlivet.</i>
<i>Levingston, Earl of Newburgh.</i>	Lord <i>Kinnaird.</i>
<i>William Boyd, Earl of Kilmarnock.</i>	Lord <i>Boyd.</i>
<i>John Cochran, Earl of Dundonald.</i>	Lord <i>Cochran.</i>
<i>Douglas, Earl of Dunbarton.</i>	Lord <i>Ettrick.</i>
<i>John Keith, Earl of Kintore.</i>	Lord <i>Inverury.</i>
<i>J. Campbell, Earl of Braisdalbin.</i>	Lord <i>Glenurchie.</i>
<i>George Gordon, Earl of Aberdeen.</i>	Lord <i>Haddo.</i>
<i>John Drummond, Earl of Melfort.</i>	Lord <i>Forth.</i>
<i>Charles Murray, Earl of Dunmore.</i>	Lord <i>Blair.</i>
<i>David Melvil, also Earl of Leven,</i>	} Lord <i>Raith.</i>
<i>and Earl of Melvil.</i>	
<i>George Hamilton, Earl of Orkney.</i>	Lord <i>Kirkwall or Dechmont.</i>
<i>John Hamilton, Earl of Ruglen.</i>	Lord <i>Rickartoun or Hillhouse.</i>
<i>Douglas, Earl of March.</i>	Lord <i>Niedpeth.</i>
<i>Patrick Hume, Earl of Marchmont.</i>	Lord <i>Polwart.</i>
<i>James Ogilvy, Earl of Seafeld.</i>	Lord <i>Deskfoord.</i>
<i>J. Carmichael, Earl of Hyndford.</i>	Lord <i>Carmichael.</i>
<i>George Mackenzie, Earl of Coomerty.</i>	Lord <i>Tarbat.</i>
<i>John Dalrymple, Earl of Stair.</i>	Lord <i>Dalrymple.</i>
<i>Archbald Primrose, Earl of Roseberry.</i>	Lord <i>Dalmeny.</i>
<i>James Stuart, Earl of Bute.</i>	Lord <i>Montquart.</i>
<i>Charles Hope, Earl of Hoptoun.</i>	Lord <i>Nisbrie.</i>

David

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David Boyl, Earl of Glasgow.
Henry Scot, Earl of Delorain.
----- Douglas, Earl of Solway.
Archbald Campbell, Earl of Ilay.

Lord Boyle.
Lord Hermitage.
Lord Tibbers.
Lord Oransay, or Dunoon, &c.

VISCOUNTS.

Robert Carey, Viscount of Falkland.
Edward Constable, Viscount of Dumbar.
--- Murray, Viscount of Stormont.
William Gordon, Viscount of Kenmure.
John Arbuthnot, Viscount of Arbuthnot.
--- Creighton, Viscount of Frendraught.
Archbald Seton, Viscount of Kingston.
--- Mackgill, Viscount of Oxenford.
Arthur Ingram, Viscount of Irving.

James Livingston, Viscount of Kilsyth.
Thomas Osburn, Viscount of Dumblane.
now Duke of Leeds in England.
William Cheney, Viscount of Newbaven.
F. Drummond, Viscount of Strathallan.
Thomas Levingston, Viscount of Teviot.
Thomas Hay, Viscount of Duplin.
John Crawford, Viscount of Garnock.
--- Primrose, Viscount of Primrose.

BARONS or LORDS.

William Forbes, Lord Forbes.
--- Frazer, Lord Salton.
Patrick Gray, Lord Gray.
--- Stuart, Lord Ochiltree.
Allan Cathcart, Lord Cathcart.
Henry Sinclair, Lord Sinclair.
--- Douglas, Lord Mordington.
Francis Semple, Lord Semple.
F. Elphinston, Lord Elphinston.
Charles Oliphant, Lord Oliphant.
--- Frazer, Lord Lovat.
William Ross, Lord Ross.
James Sandilands, Lord Torpichen.
David Lesley, Lord Lindors.
F. Elphinston, Lord Balmerinock.
Walter Stuart, Lord Blantyre.
William Cranston, Lord Cranston.
--- Balfour, Lord Burleigh.
--- Napier, Lord Napier.
Thomas Fairfax, Lord Cramond.
--- Richardson, Lord Cramond.

--- Mackay, Lord Rae.
William Forrester, Lord Forrester.
Alexander Forbes, Lord Pittligo.
Charles Frazer, Lord Frazer.
William Hamilton, Lord Bargeny.
George Ogilvy, Lord Bamff.
Patrick Murray, Lord Elibank.
David Falconer, Lord Halkerton.
John Hamilton, Lord Belbaven.
--- Sandilands, Lord Abercromby.
James Sutherland, Lord Duffus.
Robert Rollo, Lord Rollo.
--- Colvil, Lord Colvil.
--- Rutherford, Lord Rutherford.
F. Bellenden, Lord Bellenden.
--- Lesly, Lord Newark.
William Nairn, Lord Nairn.
F. Churchill, Lord Aymouth now Duke
of Marlborough.
F. Abercromby, Lord Glasford.
David Collier, Lord Portmore.

According to the Laws of Scotland before the Union, all the Electors present at the Meeting bebow'd to sign the Commission to their Representative, as is set down Page 39. But since the Union, an Indenture between the Freeholders, the Clerk of the Meeting and the Sheriff of the Shire, according to the Custom of England, has come in place of this Commission; and this Indenture must bear, That the Person therein nam'd was by the Plurality of the Freeholders elected and chosen, and is sign'd by Seven or Eight of the Voters; or so many as please, but needs not be signed by all the Electors.

The PREFACE

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The LAW, concerning the Election of Members for *Scotland*, to Sit and Vote in the Parliament of *Great-Britain*.

TITLE I.

Of the Parliament, in general.

THE Parliament being dissolved, (which is done by the Sovereign, either at Rising of the Parliament, or in the Intervals thereof, by a Proclamation) none but the King, or Queen, at the Time, hath Authority to summon a Parliament; except that, in the King's Absence out of the Realm, the *Custos Regni*, or the *Lords Justices* in the King's Name, and, during His Minority, the *Protector Regni* or *Regent* doth summon a Parliament, which cannot begin without the King's Presence, either in Person, or by Representation in Commission.

By the Laws as well of *England* as of *Scotland*, the Parliament in being, at the Time of the Demise or Death of the Sovereign, was through the said Decease *ipso jure* dissolved, till by Stat. 7 and 8. W. III. 15. in *England*, and by Act. 17. Part. 1. Sess. 6. W. III. Anno 1696. in *Scotland*, but more effectually,

since the Union of the Two Kingdoms, by a Statute in the Sixth Year of the Reign of Her present Majesty Queen *Ann*, it is Enacted, That the Parliament, in being at th time, shall not be dissolved by the Death of Her Majesty, and if sitting at such Death, is impowered to Act for Six Months, unless prorogued or dissolved by the Person to whom the Crown of Great Britain shall come; and, if the Parliament is at the Time prorogued, it shall meet on the Day to which it is prorogued, and shall continue the Residue of the Six Months, unless sooner prorogued or dissolved.

If the Parliament in being happens, at the Time of the Death of Her Majesty, to be separated; it shall immediately meet, and Act for Six Months, unless sooner dissolved.

If there is no Parliament in being, The last immediate Parliament shall convene and sit at *Westminster*, continue as afore-said, and act as if the same had never been dissolved, but subject to be prorogued or dissolved as said is.

The Lords Justices of Great Britain (*appointed by the same Stat. 6. Ann, 7. for continuing the Administration of the Government, in the Name of the Protestant Successor in his Absence out of this Realm, and till his Arrival into Britain*) are prohibited to dissolve the Parliament, ordered to be assembled as said is, without express Direction from the Successor; and are thereby disabled to give the Royal Assent to any Bill for repealing or altering. 13. and 14. Ch. II. 4. for Uniformity of publick Prayers: Or the Act made in Scotland Anno 1707. for securing the Protestant Religion and Presbyterian Church-Government. And every the Lords Justices, concurring in giving the Royal Assent to such Bill, are declared guilty of High Treason.

By the same Statute, it is provided, That, if, before the Successor arrive in Great Britain, the Lords Justices shall call a Parliament, by Writs tested in their Names, the same shall not be dissolved by the arrival of the Successor, but shall proceed without new Summons.

By St. 4. E. III. 14. A Parliament is ordained to be holden once a Year and oftner if need be.

By

By St: 36: E: III. 10. A Parliament was to be holden ev'ry Year.

By St: 16: C. II. 1. The sitting, and holding of Parliaments, is not to be intermitted or discontinued above Three Years.

By the Claim of Right for *Scotland*, it is declared that for Redress of all Grievances, and for amending, strengthening and preserving of the Laws, Parliaments ought to be frequently called, and allow'd to sit, and the Freedom of Speech and Debate secured to the Members.

By St: 6: W. and M. 2. It is enacted, That from thence forth a Parliament shall be holden once in Three Years at the least; and within Three Years after the Dissolution of that Parliament, and so of every other Parliament thereafter, legal Writs under the Great Seal are ordained to be issued forth, for calling, assembling and holding another New Parliament. And further, it is statuted, that from thenceforth no Parliament whatsoever shall have any Continuance longer than for Three Years only at the farthest, to be accounted from the Day on which by the Writs they are appointed to meet.

The King or Queen, Resolving to have a Parliament doth, out of the Court of Chancery, send Writs of Summons; at the least, Fifty Days before the Parliament begin: Every Lord of Parliament, either Spiritual, as Arch Bishops and Bishops, or Temporal, as Dukes, Marquesses, Earls, Viscounts and Barons, Peers of the Realm and Lords of Parliament ought to have several Writs of Summons.

All the Judges of the Realm, Barons of the Exchequer, of the Corf, the King's learned Council and the Civilians, Masters of the Chancery, are called to give their Assistance and Attendance in the upper House of Parliament; but they have no Voices in Parliament, and their Writs to them differ from the Writs to the Barons. For their Writs are, *Quod interfutis nobiscum et cum ceteris de Concilio nostro*, (and sometimes *nobiscum* only,) *super premissis tractaturi, vestrumq; Consilium impensuri.*

And in every Writ of Summons to the Bishops, there is a Clause requiring them to summon the following Persons to appear personally at the Parliament, in these Words, *Præmonentes Decanum & Capitulum Ecclesie vestre Norwicensis, ac Archidiaconos, totumque Clerum vestre Dioceseos, quod iidem Decani & Archidiaconi, in propriis personis suis, ac dictum Capitulum, per unum, idemque Clerus per duos Procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero divisim habentes, prædicto die & loco personaliter intersint; ad consentiendum his quæ tunc ibidem, de communi consilio dicti Regni nostri, divinâ favente clementiâ contigerit ordinari.* And the Bishop, under his Seal, makes Certificate accordingly, and these are called *Procuratores Cleri*, and many times have appeared in Parliament, as Spiritual Assistants, to consider, consult and concert *ut supra*, but had never Voices there, because they were no Lords of Parliament.

Other Writs are sent to the Sheriffs of each County, to summon the People to elect Knights for each County, Citizens and Burgesses for each City and Burgh, according to the Laws and Custom.

By Statute 7. *Hen. IV.* 15. the Election of the Knights of the Shires is ordered thus: At the next County, after the Delivery of the Writ, Proclamation is to be made in full County of the Day and Place of the Parliament; and that all there present, as well Suitors summoned as otherways, shall attend to the Election of the said Knights, and then in a full County a free and an indifferent Election shall be made, *notwithstanding any Respect or Command to the contrary (a).*

After

(a) The occasion of the last Clause was this, In the Year 1404, which was the 6th Year of the Reign of *Henry IV.* this King, by special Letters directed for that end, brought about, That no Lawier should be returned Knight or Burgess to serve in the Parliament then called; and that upon Pretence of an Ordinance in the House of Lords in 46. *Edward III.* But at the next Parliament holden in the Year following, when the said Statute 15 was made, upon Complaint of the Commons, who were by these Letters interrupted in their free Elections, it was enacted, That Ele-

After such Choice, the Names of the Parties so elected, (be they present or absent) is ordained to be written in an Indenture, under the Seals of all them that did chuse them; which Indenture, so sealed and tacked to the said Writ, is to be the Sheriff's Return thereof touching the Knights of the Shires; and in such Writs this Clause shall be put, *Et Electionem tuam in pleno Comitatu tuo factam distinte & aperte sub sigillo tuo, & sigillis eorum qui electioni illi interfuerunt; nobis in Cancellaria nostra, ad diem & locum Breui contentum certificates indilate.*

The Sheriff, after the Receipt of the Writ, is ordered to deliver a Precept under his Seal, to every Major, and Bailiff or Bailiffs, or Bailiff where no Major is, of the Cities or Boroughs within his County, reciting the Writ, and commanding them, if it be a City, to chuse by the Citizens of the same City; and if a Burrough, to chuse Burgeses, to come to the Parliament: And such Head Officers are Lawfully to return such Precepts to the same Sheriffs, by Indentures betwixt them, of such Elections, and the Names of the Citizens and Burgeses so chosen; and thereupon the Sheriff is to make a good Return of every such Writ, and also of every such Return made by the said Head Officers.

In these Elections, anciently all the People of *England* had their Votes, till it was enacted by *Henry VI.* in the Year That none should have Suffrage in Election of Knights of the Shire, but such as being Free-holders, did reside in the County, and had Yearly 40 Shillings, (which, till the Discovery of the Gold and Silver in *America*, was more than 10 Pound is now.) Whence it came to pass, that the Lay Commons were then ele-

Elections should be freely and indifferently made, notwithstanding of any Prayer or Commandment to the contrary; *i. e. sine Prece*, without any Prayer or Gift; and *sine Præcepto*, without Commandment of the King by Writ or otherways; or of any other. And my Lord Justice Coke says, It was but an Act Declaratory of the Ancient Laws and Custom of Parliament, and to ascertain the Liberty of the Subject.

By the Claim of Right for *England*, Stat. 1. W. & M. Sect. 2. 2. it is declared, That the Election of Members of Parliament ought to be free.

lected as the Clergy Commons (the *Procuratores Cleri*) were, and ever have been, *viz. sine prece, sine pretio, sine poculo, &c.* Yet there was then, as now, this Defect or Absurdity, That whereas all *Englishmen*, who have considerable Estates, ought not to be Tax'd, without their own Consent in Parliament by themselves or their Representatives: Yet, Copy-holders in *England*, (whereof there are some who have 1000 *lib.* a Year) have no Voice in the Election of Knights of the Shire.

Thus much relating to *South-Britain*, and peculiar to *England*, I thought fit to premise as Expedient, to make what follows to be better understood.

T I T L E II.

Of the Order, and of what is necessary to be observed, in Electing the Peers for Scotland, to Sit and Vote in the House of Peers of the Parliament of Great-Britain.

BY the 3d Article of the Union of *England* with *Scotland* it is agreed, That the United Kingdom of *Great-Britain* shall be represented by one and the same Parliament, to be Stiled, *The Parliament of Great-Britain*.

And by the 22d Article it is appointed, That of the Peers of *Scotland*, at the time of the Union, 16 shall be the Number to sit and vote in the House of Lords in the Parliament of *Great-Britain*: And that when Her Majesty shall declare Her Pleasure for holding the First Parliament of *Great-Britain*, until the Parliament of *Great-Britain* shall make further Provision therein, a Writ is to testify under the Great Seal of the United Kingdom, directed to the Privy Council of *Scotland*, commanding them to cause 16 Peers, who are to sit in the House of Lords,

to

to be summoned to Parliament, in manner settled by Act of Parliament in *Scotland*, of the 5th *February*, 1707; and is thus: The said 16 Peers are ordain'd to be Nam'd by the other Peers whom they are to represent, and by their Heirs and Successors to their Dignities and their Honours, *out of their own Number (a)*; and that by open Election and Plurality of Voices of the Peers present, and of the Proxies of such as shall be absent; *the saids Proxies being Peers, and producing a Mandate in Writing, duly signed before Witnesses (b)*. and both the Constituent and Proxy being qualified according to Law: Declaring also, That such Peers as are absent, being qualified as aforesaid, may send to all such Meetings, *Lists of the Peers which they judge fittest, validly signed (c) by the said absent Peers*, which shall be reckoned in the same manner as if the Parties had been present, and given in the said List. And in case of the Death, or Legal Incapacity, of any of the said 16 Peers, that the aforesaid Peers of *Scotland* shall Nominate another of their own Number in his place, and the Writ to have been directed to the Privy Council of *Scotland*, until the Parliament of *Great-Britain* made further Provision therein, was to have contained a Warrant and Command to issue out a Proclamation in Her Majesty's Name, requiring the Peers for the time, to meet and assemble at such Time and Place within *Scotland*, as Her Majesty and Her Royal Successors should think fit; to make Election of the said 16 Peers, and requiring the Clerk-Register, or

Two

(a) By a Resolve in the House of Peers, *January* 29th, 1709, a Peer of *Great-Britain* is not allowed to vote. (b) The House of Peers, *January* 26th, 1709, declared, That a Proxy of a Peer of *Scotland*, to vote at such Election, is not valid without subscribing Witnesses; and upon the 29th of the same Month it was resolved, That a Proxy of a Peer to vote at such Election is valid, altho' the Writers Name be not designed therein. And that a Proxy signed at *Westminster* before Witnesses, but not sealed nor on stamped Parchment, was a good Proxy at the Election of the 16 Peers, who are to represent the Peers of *Scotland* in Parliament. (c) *January* 29th, 1709, Resolved, That a List given in at such Elections is not valid without subscribing Witnesses; but is valid without the Writer's Name designed in the Body of the Instrument; and that a Power to give in a List being signed and sealed before Witnesses, is valid without the Writer's Name and Designation.

Two of the Clerks of Session, to attend all such Meetings, and to administer the Oaths that are, or shall be by Law required; and to ask the Voices. And having made up the Lists, in presence of the Meeting, to return the Names of the 16 Peers chosen, certified under the Subscription of the said Clerk-Register, Clerk or Clerks of Session attending, to the Clerk of the Privy Council of *Scotland*, who again was to return the same to the Court, from whence the Writ did issue, under the Great Seal of the United Kingdom.

But seeing by an Act of the First *British* Parliament, in the 6th Year of Her Majesty's Reign, Entitled, *An Act for rendering the Union of the Two Kingdoms more intire and compleat*; it is enacted, That after the 1st of May, 1708, the Queen's Majesty and Her Successors, shall have but one Privy Council for *Great-Britain*, which shall have the same Powers as the Privy Council of *England* had at the time of the Union, and none other; whereby the Council of *Scotland*, as before the Union, is at an End and extinguished. So that, pursuant to the Faculty reserved to the Parliament of *Great-Britain*, in the said 22d Article of the Treaty of Union, some farther Provision behoved to be made for electing the said 16 Peers for *Scotland*; and accordingly the same Parliament, by an Act Entitled, *An Act, to make farther Provision for electing and summoning sixteen Peers for Scotland, to sit in the House of Peers of the Parliament of Great-Britain, &c.* have enacted, That thereafter, if Her Majesty shall declare Her Pleasure for holding any Parliament, a Proclamation shall be issued under the Great Seal of *Great Britain*, commanding all the Peers of *Scotland* to meet at *Edinburgh*, or in any such Place in *Scotland*, and at such Time as shall be appointed therein, to elect the foresaid 16 Peers, as by the foresaid Act of the Parliament of *Scotland*, and by this Act of the Parliament of *Great-Britain*, is appointed.

This Proclamation must be duly published at the Mercat-Cross of *Edinburgh*, and in all the County-Towns in *Scotland*,

25 Days at least before the Meeting of the Peers to such Election.

All the Peers, before they proceed to Election, shall, in presence of the Peers assembled, take the following Oaths.

I A. B. do sincerely promise and swear, That I will be Faithful, and bear true Allegiance to Her Majesty Queen Anne. So help me God.

I A. B. do swear, That I do from my Heart abhor, detest and abjure, as Impious and Heretical, this damnable Doctrine and Position, That Princes Excommunicated or Deprived by the Pope, or any Authority of the See of Rome; may be deposed or murdered by their Subjects, or any other whatsoever.

And I do declare, That no Foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Prebeminence or Authority, Ecclesiastical or Spiritual, within this Realm. So help me God.

I A. B. do truly and sincerely acknowledge, profess, testify and declare in my Conscience, before God and the World, That our Sovereign Lady Queen Anne, is Lawful and Rightful Queen of this Realm, and of all other Her Majesty's Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, That I do believe in my Conscience, that the Person pretended to be Prince of Wales, during the Life of the late King James, and since his Decease, pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James III. or of Scotland, by the Name of James VIII. or the Stile or Title of King of Great-Britain; hath not any Right or Title whatsoever to the Crown of this Realm, or any other Dominions thereunto belonging. And I do renounce, refuse and abjure any Allegiance or Obedience to him. And I do swear, That I will bear Faith and true Allegiance to Her Majesty Queen Anne, and Her will defend to the utmost of my Power, against all Traitorous Conspiracies and Attempts whatsoever, which shall be made against Her Person, Crown or Dignity. And I will do my utmost Endeavour to disclose and make known to Her Majesty and Her Successors, all Treasons and Traitorous Conspiracies which I shall know to be against Her; or any of Them. And I do faithfully promise, to the utmost of my Power, to support, maintain, and defend the Succession of the Crown against him

the said James, and all other Persons whatsoever, as the same is and stands settled by an Act, Entitled, An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown to Her present Majesty, and the Heirs of Her Body, being Protestants. And as the same, by another Act, Entitled, An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject; is, and stands settled and entailed, after the Decease of Her Majesty; and for default of Issue of Her Majesty, to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of Her Body, being Protestants. And all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding of the same Words, without any Equivocation, Mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation and Promise, heartily, willingly and truly, upon the true Faith of a Christian. So help me God.

And these Peers also, before they proceed to Election, are ordain'd to make, repeat, and subscribe the Declaration following.

I A. B. do solemnly and sincerely, in the Presence of God, profess, testify and declare, That I do believe, that in the Sacrament of the Lord's Supper, there is not any Transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ, at or after the Consecration thereof by any Person whatsoever: And that the Invocation or Adoration of the Virgin Mary, or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are Superstitious and Idolatrous. And I do solemnly, in the Presence of God, profess, testify and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me; as they are commonly understood by English Protestants, without any Evasion, Equivocation, or Mental Reservation whatsoever, and without any Dispensation already granted me for this purpose by the Pope, or any other Authority or Person whatsoever; or without any Hope of any such Dispensation from any Person or Authority whatsoever; or without thinking that I am, or can be acquitted before God or Man; or absolved of this Declaration, or any Part thereof, altho' the Pope, or any other Person or Persons, or Power whatsoever, should dispense with or annul the same, or declare that it was null and void from the Beginning.

Peers living in *Scotland*, but not present at such Meeting, may take the Oaths, make and subscribe the Declaration in any Sheriff-Court of *Scotland*, and every Sheriff is required to return the Original Subscription of such Oath and Declaration, and to make thereof a Return in Writing, under his Hand and Seal (*d*), to the Peers assembled, whereby such Peer shall be qualified to make a Proxy, or to send a signed List, containing the Names of the 16 Peers for whom he giveth his Vote.

As to the Peers of *Scotland* residing in *England*, they may take the said Oaths, and make and subscribe the said Declaration in the Courts of *Chancery*, of *Queen's Bench*, of *Common Pleas*, or of *Exchequer* in *England*; which, being certified by Writ under the Seal of the Court to the Peers in *Scotland* at their Meeting, shall be sufficient to entitle such Peer to make his Proxy, or to send his signed List, as aforesaid.

And in case any Peer of *Scotland*, (who before-issuing such Proclamation, have made the foresaid Oaths in *England* or *Scotland* to be certified as aforesaid; and if taken in Parliament, to be certified under the Great Seal of *Great-Britain*) be at the time absent in the Service of Her Majesty, he may make Proxy, or send a signed List.

Such as are Peers both of *England* and *Scotland*, must sign by the Title of their Peerage in *Scotland*.

None are capable of more than Two Proxies at one time.

The Peers must give the Names of the Persons to be elected, to the Clerk of Register, or to Two of the principal Clerks of Session, who, after the Election, must certify the Names of these elected, and sign and attest the same in presence of the Peers: Which Certificate, must be returned to the Court of *Chancery* of *Great-Britain*, before the time appointed for meeting of the Parliament.

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(d) The House of Peers, upon the 26th January 1709, declared, That the Sheriff's Certificate of a Peer of *Scotland*'s taking the Oaths in order to qualify himself to Vote at such Election, ought to be seal'd as well as sign'd.

The Peers shall come to such Meetings with their ordinary Attendants only, under the Penalties now in force in *Scotland*, which prescribe with what Number the Subjects there may repair to the Courts of Justice (e).

The Peers so assembled, shall not act, propose, or treat of any thing except only the Election of the 16 Peers; and every Peer

(e) By Act 5. Parl. 1. *James I. Anno 1424*, it is statute, That none of what Condition soever travelling in the Country, have with him more Persons than may suffice him, and for whom he shall make ready Payment. And if any Complaint be made of these, the King's Officers are commanded to arrest them, and to put them under Lawborrows, till the King be certify'd, and give notice what shall be done with these Trespassers.

By Act 82, Parl. 14, *James II. Anno 1457*, it is ordained, That all the Lieges shall, in sober and quiet manner, come to the King's Courts Spiritual or Temporal, and that none bring with him more Persons than are in his daily Household and Family; and upon coming to his Inns, that he lay aside his Weapons. Ratified by Act 104, Parl. 14. *James III.*

By Act 41, Parl. 6, *Queen Mary, Anno 1555*, It is statuted, That Persons conven'd before a Justice Court have, with them at the Bar, six allenarly of their Friends able to give them Counsel with their Advocates to defend; and the Justice or Judges are to charge the Breakers of this Act to enter their Persons in Ward under the pain of Rebellion; and if they disobey to put them to the Horn; but if they obey and enter in Ward, they are there to remain during the Queen's Pleasure.

By Act 140, Parl. 8, *James VI. Anno 1584*, the above Acts are ratified, with this Addition, That none repair to his Majesty's Justice Courts, for Criminal Causes, or otherways than the said Acts provide, under the Pain of incurring the Crime of Convocation of our Sovereign Lord's Lieges, to be executed with all Rigour, as well against the Persons convoking, as against those who are convoked.

In *July 1583*, there was a Proclamation emitted, whereby the Subjects were prohibited to come towards Court with a greater Number than was appointed in the Proclamation, viz, 15 with an Earl, as many with a Bishop, 10 with a Lord, and as many with an Abbot or Prior; with a Baron 6. And all these were, under great Penalties, commanded to come in a peaceable manner.

An unlawful Convocation is a Commotion of the People raised without Lawful Authority and upon a private Account. The convoking of the Lieges in Bands of Men of War, for Daily or Monthly Wages, without special Licence, is by Act 75, Parl. 9, *Queen Mary*; and by Act 12, Parl. 10, *James VI.* punishable by Death. But naked Assistance at such Meetings, is not *per se* relevant to inter Death, but only an arbitrary Punishment, as was found in the Year 1665, and inferred from the above-mentioned Act 5, *James I.* And Sir *George Mackenzie*, in his *Criminals*, Title *Seditions*, concludes, That the Crime of simple Convocation is ordinarily pursued before the Council of *Scotland*, and was seldom punished either by the Council or by the Justice Court *tanquam Crimen per se*; but only as an aggravating Quality of a Riot or other Crime.

Peer who shall presume to propose, debate, or treat of any other Matter, shall incur the Penalty of a Premunire, in the 16 R. II. 5. c.

Incase any of the 16 Peers so chosen shall die, or be disabled in Law to sit in the House of Peers, Her Majesty is forthwith to issue a Proclamation for electing another Peer of Scotland to sit in the Room of such Peer, to be published, and the Election to be proceeded in, as is above directed.

By the 8th Act Parliament of Scotland, in the Year 1707, it is provided and declared, That none shall be capable to elect or to be elected, but such as are 21 Years compleat, and Protestant, excluding all Papists, or such who, being suspected of Popery and required, refuse to subscribe the Formula contained in the Act 3. Sess. 8 and 9. Parl. K. William III. in the Year Entitled, *An Act for preventing the Growth of Popery*; and is as follows.

I A. B. do sincerely from my Heart, profess and declare before God, who searcheth the Heart, That I do deny, disown and abhorr these Tenets and Doctrines of the Papal Romish Church, viz. the Supremacy of the Pope and Bishop of Rome, over all Pastors of the Catholick Church, his Power and Authority over Kings, Princes and States, and the Infallibility that he pretends to, either without, or with a General Council, his Power of dispensing and pardoning, the Doctrine of Transubstantiation, and the Corporal Presence with the Communion without the Cup in the Sacrament of the Lord's Supper, the Adoration and Sacrifice professed and practised by the Popish Church in the Mass, the Invocation of Angels and Saints, the Worshipping of Images, Crosses and Relicks, the Doctrine of Supererogation, Indulgences and Purgatory, and the Service and Worship in an unknown Tongue. All which Tenets and Doctrines of the said Church, I believe to be contrary to, and inconsistent with the written Word of God; and I do from my Heart deny, disown and disclaim the said Doctrine and Tenets of the Church of Rome, as in the Presence of God, without any Equivocation, or Mental Reservation; but according to the known and plain Meaning of the Words as to me offered and proposed. So help me God.

The Peers on the Day, and at the Place appointed by the Queen's Proclamation, meet about 10 of the Clock, and are attended by the Clerk of Register, or by Two Clerks of the Session, who call the Rolls of the Peers, and to such of them as are present administer the Oaths appointed by Law, after which, they call a second time the Roll, and if the Peer be present in Person, he Names with an audible Voice the 16 Peers, or gives to the Clerk a List of their Names, which he, in presence of the Meeting, reads; and another Clerk, or his Servant, marks the Names of the Peers that such a Peer has elected and voted for. And if the Peer called by the Roll be absent, but is represented by his Proxy, or has sent a signed List; the Clerk reads the List, as before, and likewise the Certificates concerning the absent Peers qualifying himself in order to vote in this Election, with the Proxy, and any of the Peers present may inspect and examine if these several Writings be perfected according to the Prescript of the Law; and if they be not found formal he proposes his Objections, which the Clerk marks, before he proceed to the calling the other Peer next in the Roll, to give his Vote in the Election:

When all the Peers are called, and the Voting or Listing is ended, the Clerks make a Scrutiny in presence of the Meeting; and upon finding the Names of the Peers, who to the Number of 16 have Majority of Votes in the Election, they write out a Certificate, signifying the Names of the said 16 Peers at this Meeting, elected, and sign and attest the same in presence of the Peers. And the Clerk of Register returns it to the Court of *Chancery of Great-Britain* before the time appointed for meeting of the Parliament.

In this Certificate no Notice is to be taken of the Objections made against any of these Peers, but such as please may get from the Clerks a Copy of these Objections, and at the down-sitting of the Parliament, they may, in the House of Peers, dispute the Election of the Peer objected against.

TITLE III.

Of the Order to be observed in Electing a Commissioner, or Representative of a Shire or Stewartry.

BEFORE the Year 1427, the 52 Act, Parl. 3. *James I.* was in force, whereby it was ordained, That all Barons and Freeholders of the King, seeing they are holden to give Presence in the King's Parliament and General Council, should from thenceforth be bound to compear in proper Person and not by a Proctor, except the Proctor alledge and prove a Lawful Cause of their Absence.

But by 101 Act, Parl. 7. *James I.* in the said Year 1427, it was statuted, That the small Barons and free Tenents need not come to Parliament; so that of each Sheriffdom, Two or moe wise Men, according to the Largeness of the Shire, chosen at the Head Court, shall be sent to Parliament, excepting the Shires of *Clackmannan* and *Kinross*, out of each which only One is ordained to be sent, and these were called Commissars of the Shire, but now Commissioners, who by the same Act are ordained to have the full Power of the rest of the Sheriffdom, by a Commission under the Seal of the Sheriff and of the other Barons of the Shire, to hear, treat, and finally determine all Causes to be proponed in Council or Parliament. This Act is ratified by Act 113. Parl. 11. *James V I.* and thereby further declared, That the Compearance of these Commissioners in Parliaments shall relieve the whole other small Barons and Freeholders of their Suit and Presence in Parliament. Tho' it seems, that, till this Act was made, the former Law of King *James I.* had not been in uniform and constant Observance; for by Act

75. Parl. 14. *James II.* the States thought it expedient, That no Freeholder under 20 *lib.* shou'd be constrain'd to come to the Parliament, as for Presence, except he were a Baron, or were specially called by the King's Officer or by his Writing. And by Act 78. Parl. 6. *James IV.* it is ordained, That from 11th *March*, 1503, no Baron or Freeholder within 100 Merks of new Extent, be compelled to come personally to the Parliament, except the King write for them. And all others above that Extent of 100 Merks are required to come to Parliament, under the pain of the old Unlaw. •

There being in *Scotland* 32 Shires, the Freeholders in each, before and since the Revolution in 1689, sent to the Parliament of *Scotland* Commissioners or Representatives in the following Number, set down in order of the Rolls of Parliament.

REPRESENTATIVES

	Before the Revolution.	Since the Revolution (f)
<i>Edinburgh</i>	2	4
<i>Haddington</i>	2	4
<i>Berwick</i>	2	4
<i>Roxburgh</i>	2	4
5. <i>Selkirk</i>	2	2
<i>Peebles</i>	2	2
<i>Lanerk</i>	2	4
<i>Dumfries</i>	2	4
<i>Wigtoun</i>	2	2
10. <i>Air</i>	2	4
<i>Dunbartoun</i>	2	2
<i>Bute</i>	2	2
<i>Renfrew</i>	2	3
<i>Stirling</i>	2	3
15. <i>Linlithgow</i>	2	2
		<i>Perth</i>

(f) The Act for an Additional Representation in Parliament of the Greater Shires in *Scotland*, is dated *June 14th*, 1690.

E 17 E REPRESENTATIVES

Before the Revolution.		Since the Revolution.	
Computed from the other side		Computed, &c.	
	39		46
<i>Perth</i>	2		4
<i>Kincardin</i>	2		2
<i>Aberdeen</i>	2		2
<i>Inverness</i>	2		4
20. <i>Nairn</i>	2		2
<i>Argyle</i>	2		3
<i>Fife</i>	2		4
<i>Kinross</i>	1		1
<i>Forfar</i>	2		4
25. <i>Bamff</i>	2		2
<i>Kircudbright</i>	2		3
<i>Southerland</i>	2		2
<i>Caithness</i>	2		2
<i>Elgin</i>	2		2
30. <i>Orkney and Zetland</i>	2		2
<i>Clackmannan</i>	1		1
<i>Ross</i>	2		2
In all	62	In all	88

But now by the 22d Article of the Treaty of Union it is agreed, That 45 shall be the Number of the Representatives of Scotland, in the House of Commons, of the Parliament of Great-Britain, which Her Majesty, by Her Proclamation under the Great Seal of Great-Britain, is impowered to appoint to meet at such Time and Place as Her Majesty shall think fit; which Time is not to be less than 50 Days after the Date of such Proclamation.

And by the 8th Act of the Parliament of Scotland in 1707, made for settling the manner of Electing these 45 Commoners, it is provided, That of the said 45 Representatives Thirty shall be chosen by the Shires or Stewartries, as follows, viz. One for every Shire and Stewartry, excepting the Shires of Bute and

Caithness, which shall chuse One by Turns, *Bute* having the First Election. The Shires of *Nairn* and *Cromerty*, which are also to chuse One by Turns, *Nairn* having the First Election. And in like manner, excepting the Shires of *Clackmannan* and *Kinross*, which are to chuse One by Turns, and *Clackmannan* is to have the First Election.

And incase of Death or Legal Incapacity of any of these Thirty Members from the Shires and Stewartries, it is ordained, That the Shire or Stewartry who elected the said Member, shall elect another Member in his Place.

And seeing by the said 22d Article, and Act of Parliament of *Scotland* above-mentioned, a Faculty was reserved and given to the Parliament of *Great-Britain* to make a further Provision therein; pursuant whereunto, the First Parliament of *Great-Britain*, by their Act Entitled, *For rendering the Union of the Two Kingdoms more intire and compleat*; have enacted, That when any Parliament should thereafter be called, the 45 Representatives of *Scotland* in the House of Commons the Parliament of *Great-Britain*, shall be elected by the Authority of the Queen's Writs, under the Great Seal of *Great-Britain*, directed to the severall Sheriffs and Stewarts, who on Receipt thereof, shall give notice of the time of Election for the Knights or Commissioners, for their respective Shires or Stewartries; at which time the Freeholders shall meet at the Head Burgh of their severall Shires and Stewartries, and proceed to the Election of their Commissioner; and the Clerk of these Meetings, immediately after the Elections are over, is ordained to return the Name of the Person elected to the Sheriff or Stewart, who is to annex it to his Writ, and return it with the same into the Court out of which the Writ issued.

From the Narrative or Preamble of the Act 114, Parl. 11, *James VI. Anno 1587*, it appears, That all Freeholders of the King, under the Degree of Prelates and Lords of Parliament, are to be warned by Proclamation to be present at the choosing of the Commissioners of small Barons in Parliament. And by

Act.

Act 21, Parl. 3, *Charles II.* 1681, to the effect sufficient Advertisement may be given to all Parties having Vote in Election, who are to elect at the calling of a Parliament, the Sheriffs or Stewarts are ordain'd to make Publication of the Call and Diet of Parliament, and of the Diet appointed for Election, and that at the Head-Burgh of the Shire or Stewartry, upon a Mercat-Day, between 10 and 12 in the Forenoon; and also they are ordained to make the like Intimation at each Paroch Church on *Sunday* immediately thereafter; which Diets of Election are by that Act appointed to be at least 12 Days before the meeting of Parliament, that the Commissioners elected may have Sufficiency of Time to keep the Diet of the Parliament.

Upon Receipt of the Queen's Writs or Summons of Parliament directed out of the *Chancery of Great-Britain* to the several Sheriffs or Stewarts in *Scotland*; the said Sheriffs issue out a Precept to their Officers, ordering them to make, in manner prescribed by the foresaid Act, Publication of the Calling and Diet of the Parliament of *Great-Britain*, and of the time the Freeholders are to meet at the Head Burgh of the Shire or Stewartry, for electing their Representative.

This Precept is executed before Two Witnesses, and the Officers on the Day of the Meeting of the Freeholders report an Execution signed by them and the Witnesses; and if there was no Sermon at any of the Churches, the Officer nevertheless makes Publication, and returns a formal Execution, importing, That at such a Church there was no Sermon on the *Sunday* the Day of the Execution.

If the Precept be not thus executed, or if the written Execution be not formal, the Freeholders at that Meeting cannot proceed to a valid Election of their Representative, so that another Precept must be issued out and duly executed.

By *St. 7, Hen. IV. 15.* it is ordained, That in order to the Election, of Knights of Counties for the Parliament, at the next County to be holden after the Delivery of the Writ of the Parliament,

liament, Proclamation shall be made in the full County, of the Day and Place of the Parliament. And, by Stat. 7 and 8, *William III.* 25. it is enacted, That upon every Election to be made of any Knight or Knights of the Shire to serve in Parliament, the Sheriff of the County in which such Election shall be made, shall hold his County-Court for the same Election at the most publick and usual Place of Election within the said County, and where the same has most usually been for 40 Years last past, and shall there proceed to Election at the next County Court, unless the same fall out to be holden within Six Days after the Receipt of the Writ, or upon the same Day, and then he shall adjourn the same Court to some convenient Day, giving 10 Days Notice of the Time and Place of Election.

On the Day appointed for the Election, the Freeholders meet and convene at the Head Burgh of the Shire or Stewartry, in that Room where the Sheriff or Stewart-Court is in use to be held between Mid-Day and Two Afternoon; which Room is made patent to them, and all others are removed except such Persons as they call, and the Commissioner last elected, or in his Absence the Sheriff or Stewart-Clerk, asks the Freeholders the Question who should preceed and who shall be Clerk to the Meeting, and collects the Votes, and declares the Name of the Persons chosen Preses and Clerk to the Meeting.

By the Act of Parliament 1681, the whole Freeholders in each Shire or Stewartry, having Election of Commissioners, were ordained to meet and convene upon the first *Tuesday* of *May*, 1682, at the Head Burghs of the respective Territories, and to make up a Roll of all the Freeholders within the same, whether lying within Stewartries not having Commissioners or Baileries of Royalty or Regality or without the same, containing the Names and Designations of the Heritors and others having Right to Vote, and expressing the Extent and Valuation of the Lands belonging to the several Freeholders, with Power to continue or adjourn their Meetings till the Roll of their Elections be fully compleated.

By the same Act, the Freeholders are appointed to meet and convene at the Head-burghs of the Shires and Stewartries respectively at the *Michaelmas* Head-Court Yearly thereafter, and to revise the said Roll for Election, and to make such Alterations therein as have occurred since their last Meeting, from Time to Time; which Roll, is ordained to be inserted in the Sheriff or Stewart Court-books, particularly appointed for that End, according as they shall be stated each *Michaelmas* Court. And at the Election of the Commissioners, either at the *Michaelmas* Court, or at the calling of Parliaments; in case any Alteration has happened in the Rolls of Election, since the last Meeting, the Person then coming to have Right to Vote, shall be inserted in the Roll; and there shall be no Objection admitted against any in that Roll, except such as shall be propounded before they begin to Vote to Election.

In making of this Roll, the Heritors and others craving Right to Vote, and to be inserted in the Roll of the Electors, must have the Qualifications and Capacities following.

SECTION II.

Of the Fundamental Capacity of an Elector.

BY Stat. 5. An. 8. it is declared, That none shall be capable to elect a Representative for Shire or Burgh in Scotland, to the Parliament of Great-Britain, except such as were (at the time of passing this Act, which was in the Year 1707.) capable by the Laws of Scotland, to elect Commissioners for Shires or Burghs, to the Parliament of Scotland.

By several Acts of the Parliament of Scotland, and by their Decisions given in discussing contraverted Elections, the Qualifications of an Elector are defined, but more particularly by Act 21. Parl. 3. Ch. II. All which may be sum'd up in the following Conclusions.

An Elector must be infeft in Property or Superiority, and in Possession of a Forty Shilling Land of old Extent, holding of the King *in capite*, (that is, not supplying the Vice and Place of another who is immediate Superior, but is not enter'd to the Superiority, and refuses to enter) distinct from the Feu-duties in Feu-lands: But when the Extent of the Land is not known, the Lands must be of 400 *l.* of valued Rent, or must in Yearly Rent, be worth 10 Chalders of Victual, or 1000 lib. *Scots* Feu-duties deduced (g).

So that tho' one be infeft, yet if he be not in the actual Possession of Lands of the Holding, and Extent or Valuation, or Yearly Rent foresaid, he cannot be enrolled.

Infeftment in a part of a Barony, tho' of the Holding foresaid, gives no Right to Vote, except the Party can instruct that their Lands are retoured to such a Proportion as puts them in the Terms of the Act of Parliament; or that they are of the Valuation, or of the Yearly Rent above-written.

Confirmation by the King, of a Charter of Lands, of the holding Extent or Valuation foresaid, gives no Right to Vote, except the Infeftment be a *me*, and the Instrument of Sasine be confirmed and produced: For, the Confirmation of a Charter imports no more than the Confirmation of a Personal Obligation.

Husbands, for the freeholds of their Wives, or for their own Right, when by the Courtesy of *Scotland*, they are Liferenters of Lands of the Holding and Extent or Valuation, or Yearly Rent foresaid, have Right and Title to Vote.

As also Liferenters of Lands of the Holding, &c. foresaid, have Right to Vote, provided their Right be constitute by Infeft-

(g) By Stat. 7 and 8. *William III.* --- 25. all Conveyances of any Messuages, Lands, Tenements or Hereditaments in any County, City, Burgh, Town corporate, Port or Place, in order to multiply Voices, or to split and divide the Interest in any Houses or Lands, among several Persons, to enable them to Vote at Elections of Members to serve in Parliament, are declared to be void, and of no effect; so that no more than one single Voice shall be admitted, for one and the same House or Tenement.

feftment; fo that Liferenter whose Right is constitute by Reservation in another's Right, or by personal Obligement, cannot Vote.

Wherefore a Fiar has no Vote, when the Liferenter appears and claims his Vote, unless the Fiar have distinct Lands of the Holding, &c. foresaid.

The foresaid Heritors of Freeholds, tho' their Lands are adjudged, and tho' the Creditors be Inseft, have Right to Vote all the Years of the Currency of the Legal; and tho' the Lands are burdened with Inseftments of Relief, or for Payment of Sums above their Value: So that these Persons inseft for Relief, or for Payment of Sums, have not Right to Vote, but only the Granters of the said Rights, their Heirs or Successors.

The Right of Voting is competent to apparent Heirs who have not renounced, or whose Predecessors were not denuded, provided they are by vertue of their Predecessors Right, in Possession of Lands of the Holding, Extent, Valuation, or Yearly Rent foresaid: Nevertheless, an apparent Heir claiming Right to the Estate of his Grandfather on the Mother's side, cannot Vote, until he be actually enter'd Heir; because it's in Law presumed that there is an Heir Male, till the contrary be proven by a Service.

Proper Wadsetters (b) have Right to Vote, until a Decree Declarator or voluntar Redemption or Renunciation be produced.

To give an Appriser or Adjudger Right of Voting, it is required, That the Apprising or Adjudication be expired; and next, that he be first Inseft: And in which Case, the Apprising is.

(b) By Stat: 7 and 8: William III. 25: No Person shall be allowed to have any Vote in Election of Members of Parliament, by reason of any Trust Estate or Mortgage, unless such Trustee or Mortgagee be in actual Possession, or Receipt of the Rents and Profits of the same Estate, but that the Mortgagor or *ceuiy qui trustee* in Possession, shall and may Vote for the same Estate, notwithstanding such Mortgage or Trust.

is not questionable on pretence of an Order of Redemption, until a Decreet following thereon is produced; wherefore a second or posterior Appriser cannot Vote, till the Lands be divided, and each Creditor's Share known, that the Proportion of the retoured Extent, Valuation or Yearly Rent may appear.

Persons interdicted seem to be debarred from Voting, at least from being elected; for how should a Man who is unfit to manage his private Concerns, be entrusted with the weighty Affairs of a whole People: But this may be thought to hold only when the Interdiction is *causa cognita*, because very judicious Men, towards expediting their private Interest, sometime voluntarily interdict themselves.

By *Act 2. Parl. 1. Session 7. 1698. William III.* Persons having Protection from the personal Diligence of Creditors, during the Currency of these Protections, are declared incapable to chuse a Member of Parliament.

By *Act 16. Parl. 2. James IV. Anno 1489.* The free Tenents holding of the Prince, the Duke of *Rothsay* and Steward of *Scotland*, are ordained to compear and Answer in the Parliament, with their Suit and Presence, until the King have a Son, and Suit-Rolls are ordained to be made, and endure till the Prince be born; wherethro' the Vassals of the Principallity holding of the King, during the Non-existence of a Prince. and possessing Lands of the Extent, Valuation or Yearly Rent above express, have Right to Vote in the Election of a Member of Parliament for the Shire in which their Lands ly.

In like-manner, by *Act 14. Parl. 1. Charles I. 1633*, it is declared, That the King and his Successors have undoubted Right to the Superiority of all Lands, Baronies, Mills, Woods, Fishing, *Toures*, *Fortalices*, Mannor-places, and hail Pertinents thereof, pertaining to whatsoever Abbacies, Priories, Prioreffes, or whatsoever other Benefices, of whatever Name or Designation the same be erected into Temporal Livings, before or after the general Annexation of Kirklands, in *July 1587*; and to the whole

and to the whole Casualties of these Superiorities, not dispon'd before 17th January 1627.

As also, by Act 29. Parl. 1. Sess: 2. *William and Mary, anno 1690*, it is ordained and declared, That the Superiorities of Lands, Mills, Fishings, heritable Offices and others, which formerly held of the Prelates or Bishops, or of their Chapters or of Deans, Sub-deans, or Arch-deacons, or of any other beneficed Person before; and at the abolishing of these Offices and Chapters, do now pertain and belong to their Majesties, and their Successors: And that the Vassals of these Lands, &c. which formerly held of the said Prelates, Bishops and their Chapters, Deans and others fore said, shall in all time coming hold the same of their Majesty and their Successors, in the same way and manner of holding, as they formerly held of the said Prelates, &c. conform to the Rights and Infeiments made to said Vassals; wherefore such Vassals, who by vertue of Charters and Precepts from Her Majesty or Her Royal Predecessors, are infeft in Church-lands, of the Extent, Valuation or Yearly Rent above-mentioned, have Right to claim a Vote in the Election of Commissioners for the Parliament.

The Elector must be Major, and of the Protestant Religion; for by *Statute 5. An. 8. being the Union Act*, it is declared, That none shall be capable to elect a Representative for any Shire or Burgh in *Scotland*, unless 21 Years of Age compleat, and Protestant; excluding Papists, or such who being suspected of Popery, and required, refuse to swear and subscribe the *Formula* contained in the 3 Act, made in the 8 and 9 Sessions of King *William's* Parliament in *Scotland*, (which see *Page 12.*)

The eldest Sons of Noblemen, who being to succeed their Father in Dignity and Honours, tho' they be infeft in Lands holden of the Crown, of the Extent, Valuation or Yearly Rent above-exprest; yet they have not a Vote in the Election of a Commissioner from the Shire, because they are *quasi* Peers of the Realm, and have a Precedency allotted to them: For, the

eldest Son of a Duke takes place of an Earl, and the eldest Son of a Marquis takes place of a Viscount, and the eldest Son of an Earl takes place of a Lord or Baron of Parliament: These eldest Sons did, and by their Birth enjoy a Privilege to sit in the Parliament of *Scotland*, and to hear the Transactions in the Meetings of the Estates of the Kingdom, in order to fit them for being worthy Members of that August Assembly, when upon their Father's Decease, they should sit in their Bench: And in ancient Times they were allowed to Sit and Vote in Parliament, as Proxies for Peers.

Albeit the *Act* 101. *Parl.* 6. *James I.* and *Act* 114. *Parl.* 11. *James VI.* require, That the Freeholders qualified by Law to elect, should have their actual Dwelling and Residence within the Shire, yet by *Act* of Parliament in the Year 1681, it is declared, That Non-residence shall be no sufficient Objection (i).

SECTION III.

Of the Legal Capacity of an Elector.

A Man attainted of Treason or Fellony, or denounced Fugitive from the Law, cannot be an Elector; albeit one denounced Rebel, and Registered to the Horn for a Civil Cause, is not precluded from Voting.

By *Act* 6. *Parl.* 1. *Session* 4. *William and Mary*, and *Act* 1 *P. An: anno* 1702, it is statuted and ordained, That all Electors of Members of Parliament, shall Swear the Oath of Alledgeance, and sign the same, with the Assurance, in Presence of the Meeting, before they proceed to Election.

The

(i) By *Stat.* 1. *Henry V.* 1. It is statuted, That the Knights for Shires shall be resiant in the County for which they are chosen the Day of the Date of the Writ of the Summons, so shall they be that chuse them: Also, Citizens and Burgeses shall be resiant in, and Free of the Cities and Burghs for which they are chosen.

The Oath of Allegiance.

I A. B. do sincerely promise and swear, That I will be Faithful, and bear true Allegiance to Her Majesty Queen Anne. So help me God.

The Assurance.

I A. B. do in the sincerity of my Heart, acknowledge and declare, That Her Majesty Queen Anne is the only lawful undoubted Sovereign of this Realm, as well de jure, that is, of right Queen, as de facto, that is, in the Possession and Exercise of the Government: And therefore I do sincerely and faithfully promise and engage, That I will, with my Heart and Hand, Life and Goods, maintain and defend Her Majesty's Title and Government, against the pretended Prince of Wales, and his Adherents; and all other Enemies, who either by open or secret Attempts shall disturb or disquiet Her Majesty in the Possession and Exercise thereof.

And by Statute 6. Ann: 23. it is enacted. That every Person who shall refuse to take and swear the Oath of Abjuration, (which see Page 8.) or being a Quaker, shall refuse to declare the Effect thereof, upon his solemn Affirmation, as directed by Statute 7. William III. 34. (k) to be administered by the Sheriff

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(k) By Stat: 7 and 8. William III. 34. and Stat: 13. William III. 4. it is enacted, That after the 4th of May 1696, every Quaker within the Kingdom of England, Dominion of Wales and Town of Berwick, who shall be required, upon any lawful Occasion, to take an Oath, where by Law an Oath is required, shall, instead of the usual Form, be permitted to make his or her solemn Affirmation or Declaration, in these Words, viz.

I A. B. Do declare, in the Presence of Almighty God, the Witness of the Truth of what I say.

Which shall be adjudged and taken to be of the same Force and Effect, to all Intents and Purposes, in all Courts of Justice, and other Places, as if such Quakers had taken an Oath in the usual Form.

If any Quaker making such solemn Affirmation or Declaration, shall be lawfully convicted, willfully, falsely and corruptly, to have affirmed or declared any Matter or Thing, which if the same had been in the usual Form, would have amounted to willful Perjury, he shall incur the same Penalties, as by the Laws and Statutes of this Realm, are enacted against Persons convicted of willful Perjury.

No

riff, or by the President of the Meeting, at any Election of Members to serve in the House of Commons, or any Place in Great-Britain, or Commissioners for chusing Burgeses for any Place in Scotland, at the request of any Candidate or other Person present, shall not be capable of giving any Vote for the Election of any such Member to serve in the House of Commons, for any Place in Great-Britain, or Commissioner to chuse a Burges in any Place of Scotland.

SECTION IV.

Of the Order to be observed in objecting against Voters, and of that which is to be noticed concerning the Votes.

IF any Person, who has not the Fundamental Qualifications above set down, shall claim to be insert in the Roll, which shall give occasion to Objections, it is by the said Act, Parl. 1681, statuted, That no Objection shall be admitted but such as shall be propounded before they begin to the Election; and if the Objector shall not be cleared and shall not acquiesce, they are allowed to take Instruments, containing their Objections against the admitting any Person to be insert in the Roll, or against excluding any from it. And no other Objection can be propounded in Parliament but what shall be contained in these Instruments.

By the same Act it is declared, That if the Persons objected against do compear before the Parliament, and instruct their Right to Vote, the Objector shall pay their Expenses and be further Fined in 500 Merks Scots; and if the Objection be sustained in Parliament, the Objecters appearing, shall have their
Ex.

No Quaker, or reputed Quaker, shall, by vertue of this Act, be qualified to give Evidence in any Criminal Cause, to serve on a Jury, or bear Office or Place of Profit in the Government.

Expenses. and the Party objected against, shall be Fined in 500 Merks.

Incase these Objections had been made when a Parliament was not called, a particular Diet was to be appointed by the Meeting, and intimated to the Parties contraverting, to attend the Lords of Session for their Determination, who should judge the same at the Diet appointed, summarly according to Law.

These Obections with the Answers made thereto, are by the Clerk of the Meeting put into Writing, and if the Party objected against, or the Objector, be not of themselves satisfy'd with one another's Arguments, Instruments are taken in the Hands of the Clerk to the Meeting, or other Notar, in which the Objections and Answers are inserted, and the Objecter Protests against the Vote of such a one as being incapable; for the Meeting it self has no Jurisdiction for detemining such Controversies, which were to have been decided either by the Parliament or Lords of Session, as said is.

When all the Objections and Answers thereto are propounded and marked, the Meeting proceeds to the Election, in which every one of those objected against may Vote upon their Peril.

By the Claim of Right for *England*, Stat. 1. W. and M. Sess. 2. it is declared, That the Election of the Members of Parliament ought to be free. Wherefore,

By Stat. 5. W. and M. 20. no Collector, Supervisor, Gauger, or other Officer or Person whatsoever, concerned or employed in the Charging, Collecting, Levying, or Managing the Duties of Excise, or any Branch or Part thereof. And by Stat. 12 and 13, W. 3. 10. no Commissioner, Collector, Comptroller, Searcher, or other Officer or Person concerned or employed in discharging, collecting, or managing the Customs or any Branch thereof, shall by Word, Message or Writing, or in any other manner, endeavour to periwade any Elector to give or dissuade any Elector from giving his Vote for the Choice of
any

any Person to be a Knight of the Shire, Citizen, Burgeſſes or Baron of any County, City, Burgh or Cinque-port. And every Officer or other Perſon offending therein, ſhall forfeit the Sum of 100 lib. one Moyety thereof to the Informer, the other to the Poor of the Paroch where ſuch Offence ſhall be committed, to be recovered by any Perſon that ſhall ſue by Action of Debt, Bill, Complaint, or Information in any of their Majesties Courts of Record at *Westminster*, in which no *Essoin*, Protection, Privilege or Wager of Law, or more than one *Imparance* ſhall be allowed; and every Perſon convicted on ſuch Suit, ſhall be for ever after incapacitated to bear any Office or Place of Trust under the Crown.

SECTION V.

Of the Persons Eligible, and by Law qualified to represent in Parliament a Shire or Burgh in Scotland.

TH E Parliament of *Scotland* conſiſted of Three Eſtates, the Clergy, the Barons and the Burgeſſes, and to the end, that of theſe Three there might be no Confuſion; by *Act 33, Parl. 11, James VI. Anno 1587*, it was ſtatuted, That no Perſon ſhould take upon him the Function, Office or Place of all the Three Eſtates, or moe of them, but ſhould occupy the Place of that Eſtate wherein he commonly profeſſed himſelf to live, and whereof he took his Stile or Title: Which Act was occaſioned by the Factions in the Reign of Queen *Mary*; the Popiſh and Proteſtant Party contending who ſhould prevail in Parliament. The Popiſh Clergy, (who were very Numerous in Parliament, ſince all the Biſhops, Mitred Abbots, did ſit there as Churchmen,) each of them who had Lands and Heritage craved Two Votes, One as Churchmen, and another as Barons; to prevent which for the future, this Act was made, diſcharging any of the Three Eſtates to take upon him

him the Office of all the Three Estates, or of any Two of them.

By Stat. 6. An. 7. it is enacted. That every Person disabled to be elected, or to sit or vote in the House of Commons of any Parliament of *England*, shall be disabled to be elected, or to sit or vote in the House of Commons of any Parliament of *Great-Britain*.

An Alien cannot be elected a Member of the Parliament, because he is not the King's Liège-subject; and that albeit he be made Denizon by Letters, Patents, &c. for thereby he is made *quasi seu tanquam Ligens*: But that will not serve, for he must be *Ligens revera*, and not *quasi*, &c. And such an one hath been disallowed by the House of Commons, because he can hold no Place of Judicature; nevertheless, an Alien Naturalized by Parliament, was eligible to this or any other Place of Judicature. But by Stat. 12 and 13. W. 3. 2. it is enacted, That after the Limitation of the Crown to the Princess *Sophia of Hanover*, no Person born out of the Kingdoms of *England*, *Scotland*, or *Ireland*, or the Dominions thereunto belonging, (altho' he be Naturalized or made Denizon, except such as are born of *English* Parents) shall be capable to be a Member of the House of Commons.

By Stat. 23. Henry VI. ch. 15. it is ordained, That the Knights of the Shires for the Parliament to be chosen, shall be notable Knights of the same Counties for the which they shall be chosen, or otherways such notable Esquires or Gentlemen born in the same Counties, as shall be able to be Knights, and no Man to be such Knight which standeth in the Degree of a Yeoman or under. And in *North-Britain*, he who is incapable to vote in the Election of a Representative to the Parliament, cannot be elected. And by the Narrative of Act 114. Parl. Ja. VI. the Freeholders are directed to chuse wise Men, being the King's Freeholders, resident Indwellers in the Shire, of good Rent, and well esteemed; to be Commissioners to the Parliament for

the Shire. But by the Act in the Parliament 1681, Non-residence is no more an Objection.

None of the Judges of the *King's Bench*, or *Common-Pleas*, or Barons of the Exchequer in *England*, can be chosen Knight, Citizen or Burgess of Parliament, because they are Assistants in the House of Lords; nevertheless, any who have Judicial Places in the Court of *Wards*, Court of *Dutchie*, or other Courts Ecclesiastical or Civil, being no Lord of Parliament, are eligible. Agreeable whereunto, the Lords of Session, Lords Commissioners of Justiciary, and Barons of the Exchequer in *Scotland*, cannot be chosen to be a Member of the House of Commons, by reason of their Offices which require their constant Attendance in *Scotland*.

A Sheriff of a County cannot be elected for that County in which he is Sheriff, tho' he may be chosen for another County, as my Lord Justice *Coke* observes. That at the Parliament holden 1. *Caroli regis*, the Sheriff of the County of *Buckingham* was chosen Knight for the County of *Norfolk* and returned into the *Chancery*; and having a *Sub pana* out of the *Chancery* served upon him at the Suit of the Lady *C. pendente Parlamento*, upon Motion he had the Privilege of Parliament allowed unto him by the Judgment of the whole House of Commons.

As the eldest Sons of Noblemen, by the Laws of *Scotland*, cannot elect, so neither could they be elected Members for the Parliament of *Scotland*; and albeit, by the Laws of *England*, they may be Members of the House of Commons, yet in the Parliament holden the 6th Year of the Reign of Her present Majesty Queen *Anne*, it was found by the House of Commons, That the ancient Custom in *Scotland* obtains with respect to the Members that come from *Scotland*, and therefore a Nobleman's eldest Son cannot be elected to represent in Parliament any Shire in *Scotland*.

Majors, or Bailiffs of Towns Incorporate are eligible.

Any of the Profession of the Common Law, and in the Practice thereof, is eligible.

My Lord Chief Justice Coke observes, That at a Parliament holden at *Coventry*, Anno 6. Hen. IV. the Parliament was summoned by Writ and by Colour of an Ordinance in the House of Lords. In 46. Ed. III. the King forbade that any Lawier should be chosen Knight, Citizen or Burgess; by reason whereof this Parliament was fruitless, and never a good Law made thereat, and therefore called *Indoctum Parliamentum*, i. e. the Lack-learning Parliament. And seeing these Writs were against Law, Lawiers ever since (for the great and good Service of the Common Wealth) have been eligible. For as it hath been said, the Writs of Parliament cannot be altered without an Act of Parliament; and albeit the Prohibitory Clause had been inserted in the Writ, yet being against Law, Lawiers were of Right eligible, and might have been elected Knight, Citizen or Burgess in that Parliament of 6. Henry IV.

By special Order of the House of Commons, the Attorney-General is not eligible to be a Member of the House of Commons.

A Man attainted of Treason or Felony, &c. or Fugitive from the Law, is not eligible; for concerning the Election of Knights, the Words of the Writ bear, *Duos milites gladiis Cinctos magis idoneos & discretos eligi fac*: And for the Election of Citizens and Burgesses, the Words of the Writ be, *Duos, &c. de discretioribus & magis sufficientibus*, which they cannot be said to be, when they are Fugitive, or are attainted of Treason or Felony, &c.

Albeit a Man be denounced to the Horn and Registered for a Civil Cause, he may nevertheless be chosen and elected to be a Member of Parliament.

A Person interdicted cannot be elected.

By Act 22, Parl. W. III. Sess. 7. 1698, one having Protection from the personal Diligence of Creditors, during the Currency of these Protections, and till he renounce the Benefit thereof, is incapable to be chosen a Member of Parliament.

None of the Clergy, tho' he be of the lowest Order, are eligible to be Knight, Citizen, or Burges of Parliament, because they are of another Body, *viz.* of the Convocation in *England*. And in *Scotland*, That Her Majesty's loving and good Subjects may be Faithfully instructed in the Doctrine of their Salvation; and that the Ministers of God's Word and Sacraments may the better and more diligently attend upon their own Charges and Vocation, it is by *Act 133, Parl. 8. Ja. VI. 1584*, statuted, That they Faithfully wait thereupon, to the Comfort and Edification of the Flock committed to them; and that none of the Ministers of the Gospel, or who shall at any time thereafter be admitted to that Function, shall in any ways accept, use and administrate any Place of Judicature, in whatever Cause Civil or Criminal. By which Law, the present Clergy in *Scotland* are precluded from being Members of Parliament.

And by *Stat. 7, W. III. 4.* no Person to be elected to serve in Parliament for any County, City, Town, Borough, Port or Place within *England, Wales, or Berwick upon Tweed*, after the Test of the Writ of Summons to Parliament, or issuing out or ordering of the Writ or Writs of Election, upon the calling or suing of any Parliament hereafter, or after any such Place becomes vacant in the time of the present or any other Parliament, shall or do by himself, or by any other Way or Means on his or their Behalf, or at his or their Charge, before the Election for any County, City, Town, &c. directly or indirectly give present, or allow to any Person or Persons having Voice or Vote in such Elections, any Money, Meat, Drink, Entertainment or Provision; or make any Present, Gift, Reward or Entertainment; or shall at any time make Promise, Agreement, Obligation or Engagement, to give or allow any Money, Meat, Drink, &c. to, or for any such Person or Persons in particular, or to any such County, City, Town, &c. in general, or to or for their Use, Advantage, Benefite, Employment, Profits or Preferments, of any such Person or Persons,

Place or Places in order to be elected, or for being elected to serve in Parliament for any such County, City or Town, &c.

Every Person or Persons so doing, giving, presenting or allowing, making, promising, engaging, acting or proceeding, shall be disabled and incapacitated upon such Election to serve in Parliament, for such County, City, &c. or Place; and such Person shall be deem'd and taken no Member in Parliament, but shall be declared and enacted to be to all Intents, Constructions and Purposes, as if they had been never returned, or elected Members for the Parliament.

By *Stat. 5 and 6. W. and M. 7.* it is enacted, That no Member of the House of Commons, shall at any time be concerned directly or indirectly, or any other in Trust for him, in the Farming, Collecting or Managing any of the Duties or other Aids that shall be granted by Act of Parliament, except the Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise, and Commissioners of the Land-Tax, not exceeding the present Number in each Office and Commission.

By *Stat. 11 and 12, W. 3. ch. 2.* it is enacted, That if any Member of the House of Commons, during the time of his being a Member of Parliament, by his Deputy or any other in Trust for him or his Benefit, take, enjoy or execute any Office, Place or Employment, touching or concerning the Farming, managing or collecting the Duty of Excise, or determining Appeals concerning the said Duty; or comptrolling or auditing the Accompts of the same, such Persons are declared and enacted to be absolutely incapable of sitting, voting or acting as a Member of the House of Commons in such Parliament.

And by *Stat. 12 and 13, W. 3. ch. 10.* it is enacted, That no Member of the House of Commons shall be capable of being a Commissioner or Farmer of the Customs, or of holding or enjoying in his own Name, or in the Name of any other Person in Trust for him, or for his Use or Benefit, or of executing

by himself or his Deputy, any Office, Place or Employment, touching or concerning the Farming, collecting or managing the Customs.

If any Member of the House of Commons shall, during the time of his being a Member of Parliament, by himself or his Deputy, or any other in Trust for him or for his Benefit, take, enjoy or execute any Office, Place or Employment, touching or concerning the Farming, managing or collecting the Customs; such Persons are declared and enacted to be absolutely incapable of sitting, voting or acting as a Member of the House in such Parliament.

By Stat. 4 and 5. *Anne ch. 8.* it is enacted, That no Person, who shall have in his own Name, or in the Name of any Person or Persons in Trust for him or for his Benefit, any new Office or Place of Profit whatsoever under the Crown, which at any time hereafter shall be created or erected; nor any Person who shall be a Commissioner or Sub-commissioner of the Prizes, Secretary or Receiver of the Prizes, nor any Comptroller of the Accompts of the Army, nor any Commissioner of Transports, nor any Commissioner of the Sick and Wounded, nor any Agent to any Regiment, nor any Commissioners for Wine-Licenses, nor any Governour, nor Deputy-Governour of any of the Plantations, nor any Commissioner of the Navy employed in any of the Out-ports, nor any Person having any Pension from the Crown during pleasure, shall be capable of being elected, or of sitting or voting as a Member of the House of Commons, in any Parliament which shall be hereafter summoned and holden.

No greater Number of Commissioners shall be made for the Execution of any Office, than have been employed in the Execution of any such from the first Day of the Session.

Nothing contained in the above Act shall extend or be construed to extend to any Member of the House of Commons, being an Officer in Her Majesty's Navy or Army, who shall

receive any new or other Commission in the Navy or Army respectively.

If any Person hereby disabled or declared to be incapable to Sit or Vote in any Parliament hereafter to be holden, shall nevertheless be returned as a Member to serve for any County, City, Town or Cinqueport, in any such Parliament, such Election and Return are hereby enacted and declared to be void, to all Intents and Purposes whatsoever: And if any Person disabled, or declared incapable by this Act to be elected, shall presume to Sit or Vote as a Member of the House of Commons, in any Parliament to be hereafter summon'd, such Person, so Sitting or Voting, shall forfeit the Sum of 500 *l.* to be recovered by such Person as shall sue for the same by Action of Debt, Bill, Plaint or Information, wherein no Essoin, Protection or Wager of Law shall be allowed, and only one Impar lance.

By Stat: 2, 3 & 6. *An. ch.* 25. it is enacted, That no Register for the registering Memorials of Deeds, Conveyances and Wills, within the East-riding and West-riding of the County of York, or Town and County of Kingston, upon Hull, or his Deputy for the Time being, be capable of being chosen a Member to serve in Parliament.

By Stat: 5 and 6. *William and Mary* 7. The Commissioners of the Treasury, and the Officers and Commissioners for managing the Customs and Excise, not exceeding the Number at that Time, in each Office and Commission; and the Commissioners of the Land-Tax may be elected and chosen Members of Parliament. And by the 4 & 5. *Anne* 8. the Officers in the Navy or Army, who shall receive any New or other Commission in the Navy or Army respectively, may be chosen Members of the House of Commons.

It is by Statute 5, and 6. *William and Mary* 20. enacted, That it shall and may be lawful to, and for any Member or Members of the House of Commons, to be a Member or Mem-

bers of the Corporation of the Governour and Company of the Bank of England.

And by Stat: 6. Anne 7. The Commissioners for disposing of 398085 lib. 10 sh. and other Sums arising, to Scotland, by way of Equivalent, to the Purposes mentioned in the Articles of Union, shall by reason thereof, or of any other Commission for disposing thereof, or of any part of the same, or the Execution of such Commission, not be disabled from being a Member of Parliament.

SECTION VI.

Of the Commission granted by the Freeholders, to the Person elected, and of what is to be observed in the due signing thereof.

WHen the Objections against the Freeholders claiming Vote in the Election, and to be insert in the Roll of the Electors, are ended, the Oaths appointed by Law, for qualifying Electors, are administered by the Preses of the Meeting, to the Freeholders present: After which, the Meeting proceeds to the Election; and the Votes are collected in order of the Roll, and are marked by the Clerk of the Meeting; and the Freeholder capable to be elected, who has Plurality of Votes, is declared the Commissioner and Representative of the small Barons and Freeholders in that Shire or Stewartry, and get a Commission for that End, in relation to which,

By Act 101. Parl. 7. James I. Anno 1427. it is statuted, That the Commissioners shall have full and whole Power from the remnant Freeholders in the Sherifffdom, under the witnessing of the Sheriff's Seal, with the Seal of divers Barons of the Shire, to hear, treat, and finally determine all Causes to be proponed in Parliament.

And

And by *Act 114. Parl. 11. James VI. Anno 1587.* it is ordained, That the Commissioners should be authorized with sufficient Commissions of the Sherifffdoms from which they come, sealed and subscribed by Six at least, of the Barons and Freeholders.

Sir *George Mackenzie* in his *Observations* says, That in contraverted Elections, if neither of the Competitors have Six, a new Election will be order'd, because unlawful: Yet if all the Barons were cited, and fewer than Five were only present, it might be thought, that a Commission signed by these Five, would be sufficient; because the Absence of Barons should not prejudice the Shire. However, in the Convention 1678. many inclined to think a new Election should in that Case be ordered, because of this Act; and that the Shire should not have a Vote in Parliament, who would not send legal Commissions.

And by *Act 27. Parl. 15. James VI. Anno 1597.* it's statuted, That no Barons shall at any Parliament, be received as Commissioners from any Shire, except they bring and produce sufficient Commissions granted to them in a full Convention of the whole Freeholders in the several Sherifffdoms, and authorized with the Subscription of a great Number of the Barons then present, and of the Clerk to the Meeting.

The Commission must be sign'd in a full Convention, at which the Signers must have been present, and Voting: For in the Parliament *Anno 1681.* at discussing the contraverted Elections of the Commissioners of *Haddingtoun* Shire, no Votes were sustained, but of those who Voted and signed the Commission before the Meeting was dissolved: And the Votes of these who came immediately thereafter, were not sustained, tho' the Preses returned with some of the Number. But in the Elections of *Berwick*-Shire, it was found by the same Parliament, That a Person was capable to Vote, albeit he was detain'd Prisoner, by a Misinformation of one of the Competitors; he having given to the Meeting, an Account of the Way and Manner

Manner of his Imprisonment, and declared to them his Vote; and after his Enlargement, having immediately signed the Commission.

By Stat. 7. Henry IV. 15. it is ordained, That after the Election, the Names of the Persons chosen, be they present or absent, are to be written in an Indenture, under the Seals of all them that did elect.

TITLE IV.

Of the Order to be observed in electing the Citizens or Burgeses for the Cities or Burghs in Scotland, and of the Qualifications of the Commissioners to choose, and of the Person elected.

THere are in Scotland 66 Cities or Burghs, who sent Representatives to the Parliament of Scotland, and every one of these Burghs sent one Member, chosen by the common Council of the said Burgh, except that the City of Edinburgh sent Two Commissioners: So that this State of Burgeses consisted of Sixty Seven Members, sent from the following Burghs, ranked in the Rolls of Parliament, thus,

E dginburgh	2	Air	1
Perth	1	10. Hadingtoun	1
Dundee	1	Dysert	1
Aberdeen	1	Kirkaldy	1
Stirling	1	Montrose	1
Linlithgow	1	Couper	1
St. Andrew's	1	15. Anstruther-Easter	1
Glasgow	1	Dumfries	1

In-

Inverness	I	Rothsay	I
Bruntisland	I	Nairn	I
Innerkeithing	I	Forss	I
20. Kinghorn	I	45. Ratherglen	I
Brichen	I	North-Berwick	I
Irvine	I	Anstruther-Wester	I
Jedburgh	I	Cullen	I
Kirkcudbright	I	Lauder	I
25. Wigtoun	I	540. Kintore	I
Dumfries	I	Annandale	I
Pittenweem	I	Lochmaben	I
Selkirk	I	Sanguhar	I
Dumbarton	I	New-Galloway	I
30. Renfrew	I	545. Kilrenny	I
Dumbar	I	Fortrose	I
Lanerk	I	Dingwall	I
Aberbrothock	I	Dornock	I
Elgin	I	Queensferry	I
35. Peebles	I	60. Inveraray	I
Crayl	I	Inverury	I
Tain	I	Week	I
Calross	I	Kirkwall	I
Bamff	I	Inverbervey	I
40. Whithorn	I	65. Stranraer	I
Forfar	I	Cambletoun.	I

By the foresaid Act 8. Parl: anno 1707. it is provided, That of the Forty Five Representatives of Scotland, in the House of Commons, of the Parliament of Great-Britain, Fifteen should be chosen by the Royal Burrows, as follows, viz.

That the Town of Edinburgh should have Right to elect and send one Member to the Parliament of Great-Britain. And,

That each of the other Burghs should elect a Commissioner in the same manner as they were in use to elect Commissioners to the Parliament of Scotland; which Commissioners and Burghs, being divided into Fourteen Classes or Districts, should meet at such Time, and Burghs within their respective Districts, as Her Majesty, Her Heirs or Successors should appoint, and should elect one for each District, which are as follows; here placed according to their Rank in the Rolls of Parliament.

The First District.

I.

Tain, Dingwall, Dornock, Week, Kirkwall.

II.

Inverness, Nairn, Forres, Fortrose.

III.

Elgin, Banff, Cullen, Kintore, Inverury.

IV.

Aberdeen, Montrose, Birchen, Aberbrothock, Inverbervy.

V.

Perth, Dundee, St. Andrew's, Couper, Forfar.

VI.

Anstruther-Easter, Pittenweem, Crayl, Anstruther-Wester, Kilreny.

VII.

Dysart, Kirkaldy, Bruntisland, Kinghorn.

VIII.

Stirling, Innerkeithing, Dumfermling, Culrofs, Queensferry.

IX.

Glasgow, Dumbarton, Renfrew, Rutherglen.

X.

Haddingtoun, Jedburgh, Dumbar, Northberwick, Lauder.

XI.

Linlithgow, Selkirk, Lanerk, Peebles.

XII.

Dumfries, Kirkcudbright, Annan, Lockmaben, Sanquhar.

XIII.

Wigtoun, Whitehorn, New-Galloway, Stranraer.

XIV.

Air, Irvin, Rothsay, Inveraray, Campbeltoun.

And

And by the same Act it is ordained, That where the Votes of the Commissioners of the said Burghs, met to choose their Representatives for their several Districts to the Parliament of Great Britain, shall be equal : In that case, the President of the Meeting shall have a casting or decisive Vote, by and attour his Vote as a Commissioner for the Burgh from which he is sent.

The Commissioner from the eldest Burgh presides in the first Meeting ; and the Commissioners from the other Burghs in their respective Districts, are to preside afterwards by Turns, in the Order as the said Burghs were called in the Rolls of the Parliament of Scotland.

In case any of the said Fifteen Commissioners from Burghs, shall, during the Currency of a Parliament, decease, or become legally incapable to sit in the House of Commons ; then the Town of *Edinburgh*, or the District which choosed the said Member, shall elect another in his place, to serve, during the Continuance of that Parliament.

But there being a Faculty given (by the said 22 Article of the Treaty of Union, and by the Act of the Parliament of Scotland, and reserved to the Parliament of Great Britain, to make further Provision therein : Therefore the first Parliament of Great Britain, by the foresaid Act, for rendering the Union of the Two Kingdoms more entire and compleat, have enacted, That for Election of the Fifteen Representatives of the Royal Burrows, the Sheriff of the Shire of *Edinburgh*, shall, on the Receipt of the Writ, direct his Precept to the Lord Provost of *Edinburgh*, to cause a Bugels to be elected ; and on Receipt thereof, that City shall elect, and their common Clerk shall certify his Name to the said Sheriff, who shall annex it to his Writ, and return it to the said Court from whence it issued. And as to the Royal Burghs divided into Fourteen Classes, the several Sheriffs or Stewarts, shall, on Receipt of their several Writs, direct a Precept to every Royal Burgh within their respective Jurisdictions, re-citing the Contents and Date

of the Writ, commanding them to elect a Commissioner, as they formerly used, to the Parliament of *Scotland*; and to order the Commissioners to meet at the presiding Burgh, upon the 30th Day after the Test of the Writ, unless on the *Lord's Day*, and then the Day after, and choose their Burgesses: And the common Clerk of the presiding Burgh, shall, immediately after Election, return the Name of the elected, to the respective Sheriff or Stewart, who shall annex and return as aforesaid.

And in case a Vacancy should happen in time of Parliament, by Decease or Incapacity, a new Member shall be elected; conform to the Method before appointed, herein. And in case such Vacancy be of a Representative for any one of the said Fourteen Classes, that Burgh which presided at the Election of the deceased or disabled Member, shall preside at the new Election.

And in case that on the Issuing of the Writs of Summons for electing, any Shire or Stewarty hath not at the time, a Turn to elect; then it shall be omitted out of the Writ directed to such a Sheriff or Stewart.

To maintain and preserve the Distinction of the Estates of Parliament, and to avoid their Confusion, as is directed by *Act 33. Parl: 11. James VI. 1587.* it may be thought that a Freeholder not being an actual Trading Merchant, cannot be chosen a Member of Parliament to represent a Burgh. And Sir George Mackenzie of Rosehaugh, Advocate to King *Charles H.* in his *Observations* upon that *Act*, says, It was made to keep Barons, who could not get themselves chosen to represent their Shires, from being elected Burgesses of Parliament, though they were Provosts or Magistrates, as they then ordinarily were: And by that same Act it may be thought, that a Burgess, who is ordinarily so designed, should be debarred from being chosen a Baron or Knight of a Shire. However this Act was long in desuetude, till by Acts of Burrows, all Burgesses are discharged from electing Gentlemen to represent them in the

Parliament, under the Pains specified in these Acts: For they found Gentlemen did not adhere to the true Interest of Burghs which they did not understand, and it might be suspected, that none desired to be so elected but such as had private Designs; albeit, on the other Hand, this might be thought a proper Way for Burgeses to have their Interests maintained by Lawyers, or able States-Men, whom they may chuse.

Further, by an Act. 3. Parl. Ch. II. it is determined, That only actual Trading Merchants can represent Burghs-royal in Parliament; which Act was founded upon an express Decision of the Session.

But none of these Laws made for precluding Gentlemen nor Merchants to be chosen to represent Burghs-royal in Parliament have taken effect; for in Imitation of the *English* Parliament, we did choise Lawyers and Learned Gentlemen to represent Burghs in Parliaments before the Union, and continue still so to do. However, these ancient Laws are so far regarded, that the Commissioners sent to elect is a Burges, of the Burgh from whom he is sent, and the Member elected is a Burges of one or other of the Burghs within the District which he is chosen to represent. And this we may call the Fundamental Qualification of a Citizen or Burges to be elected Member of Parliament, and is in place of a Freehold with respect to Commissioners from Shires. But besides his being a Burges, he must have all the other Qualifications by Law required in the Electors of Commissioners of Shires, and in the Person elected to represent a Shire mentioned in the former Section, to which I refer.

Upon the Receipt of the Sheriff's Writ, sent as above directed, the Magistrates and common Town-Clerk of the respective Burghs by whom the Community is represented, meet in their Council-House, and the Sheriff's Precept being read, they either proceed immediately to the Election of a Commissioner, or appoint another Diet for that purpose, and when that comes they Nominate their Commissioner, giving him a Commission
and

and Power to meet upon the Day appointed by the Sheriff's Writ at the presiding Burgh, with the Commissioners of the other Burghs within that District, to chuse and elect a Representative from the several Burghs of their District, to sit and vote in the House of Commons of the ensuing or current Parliament of Great-Britain.

And on the 30th Day after the Tests of Writ or Summons of Parliament, the several Commissioners meet and chuse their Member of Parliament accordingly, upon which the common Clerk of the presiding Burgh, returns the Name of the Person elected to their respective Sheriff or Stewart who directed to his Burgh the Precept for choosing.

An Alphabetick Table of the Royal Burghs in Scotland, which send Representatives and Members to the Parliament of Great-Britain. Shewing,

The Rank in the Roll of Parliament of Scotland.	The District the Burgh belongs to.	The Shire in which it lies.
A		
A Berbrothick 33	iv	Forfar
Aberdeen 4	iv	Aberdeen
Air 9	xiv	Air
St. Andrews 7	v	Fife
Annan 51	xii	Dumfries
Anstruther-Haster 15	vi	Fife
Anstruther-Wester 47	vi	Fife
B		
Bamf 39	iii	Bamf
Breichen 21	iv	Forfar
Bruntisland 18	vii	Fife

The Rank in the Roll of
Parliament of Scotland.

The District the
Burgh belongs to.

The Shire in which
it lies.

C		
Campbeltoun	66	xiv
Coupar	14	v
Crayl	36	vi
Cullen	48	iii
Culross	38	viii
D		
Dingwal	57	i
Dornock	58	i
Dumbar	31	x
Dunbartoun	29	ix
Dumfermling	26	viii
Dumfries	16	xii
Dundee	3	v
Dysart	11	vii
E		
Edinburgh	1	
Elgin	34	iii
F		
Forfar	31	v
Forreſs	44	ii
Fortrose	56	ii
G		
Glasgow	8	ix
H		
Haddingtoun	10	x
I		
Leith	23	x

Argyle

Dyff

Fife

Barn

Perth

Ross

Sutherland

Haddingtoun

Dunbartoun

Fife

Dumfries

Forfar

Fife

Edinburgh

Elgin

Forfar

Elgin

Ross

Leith

Haddingtoun

Roxburgh

Inner-

The Rank in the Roll of
Parliament of Scotland.

The District the
Burgh belongs to.

The Shire in which
it lies.

Innerkeithing
Inveraray
Inverbervey
Inverness
Inverury
Irvin

19
60
64
17
61
22

viii
xiv
iv
ii
iii
xiv

Fife
Argyle
Kincardin
Inverness
Aberdeen
Ayr

K

Kilrenny
Kinghorn
Kintore
Kirkaldy
Kirkcubright
Kirkwall

55
20
50
12
24
63

vi
vii
iii
vii
xii
i

Fife
Fife
Aberdeen
Fife
Kirkcubright
Orkney

L

Lauder
Lanerk
Linlithgow
Lochmaben

31
32
6
51

x
xi
xi
xii

Berwick
Lanerk
Linlithgow
Dumfries

M

Montrose

13

iv

Forfar

N

Nairn
New-Galloway
North-Berwick

43
54
46

ii
xiii
x

Nairn
Argyll
Haddington

P

Peebles
Perth
Pittenweem

35
2
27

xi
v
vi

Peebles
Perth
Fife

The Rank in the Roll of Parliament of Scotland.	The District the Burgh belongs to.	The Shire in which it lies.
Q		
<i>Queensferry</i> 59	viii	<i>Fife</i>
R		
<i>Renfrew</i> 30	ix	<i>Renfrew</i>
<i>Rothsay</i> 42	xiv	<i>Bute</i>
<i>Rutherglen</i> 45	ix	<i>Lanerk</i>
S		
<i>Sanguhar</i> 53	xii	<i>Dumfries</i>
<i>Selkirk</i> 28	xi	<i>Selkirk</i>
<i>Stirling</i> 5	xiii	<i>Stirling</i>
<i>Stranraer</i> 65	xiii	<i>Wigton</i>
T		
<i>Tayn</i> 37	i	<i>Ross</i>
W		
<i>Week</i> 62	i	<i>Caithness</i>
<i>Whithorn</i> 60	xiii	<i>Wigton</i>
<i>Wigton</i> 25	xiii	<i>Wigton</i>

TITLE V.

Of the Duty of the Sheriffs and Stewarts, Majors or Provosts, and Bailies and Clerks, and of other Officers concerned in the returning the Writ of Summons to Parliament, with the Names of the Representatives elected.

THE Duty of a Sheriff or Stewart lies, 1st. In giving Order for the Election of a Representative for the Shire

H

or

of Stewartry over which he is Sheriff or Stewart. *2dly.* In directing his Precepts to the Magistrates of the Cities or Burghs within his County, for chusing Citizens or Burgeses to come to Parliament. And *3tio.* In making true and Lawful Returns of the Writs of Parliament, with the Indentures and Names of the Knights and Citizens elected, to the Court out of which these Writs are issued.

It is by *Stat. 6. An. 6.* enacted, That the Sheriffs and Stewarts of the respective Shires and Stewartries in Scotland, to whom the Queen's Writs under the Great Seal of Great-Britain, for electing and chusing the 45 Representatives of Scotland are directed; shall on Receipt of such Writs, furthwith give Notice of the Time of Election for Knights or Commissioners for their respective Shires or Stewartries, which Intimation is to be made according to the Order prescribed by the Act of Parliament 1681; of which before.

The Clerks chosen by the Freeholders meeting, in obedience to the Sheriff's Order and Precept, for chusing their Commissioners, as is elsewhere declared, are by the same Act 6. *An. 6.* ordained to return the Names of the Persons elected at such Meeting, to the Sheriff or Stewart of the Shire or Stewartry.

The Sheriff again, by the same Act, is ordained to annex the Return of the Commissioner's Name to the Queen's Writ under the Great Seal directed to him, and to return it with the same, unto the Court out of which the Writ of Summons to the Parliament is issued.

By *Stat. 7. Hen. IV. 15.* it is ordained, That after Election, the Names of the Persons so chosen, shall be written in an Indenture sealed and tacked, as is directed by that Act, of which before.

The *Stat. 23. Hen. VI. 15.* ordains, That every Sheriff who maketh not due Election of Knights to come to Parliament in convenient time without Collusion, and that maketh not good and true Return of such Elections, shall forfeit to the King 100 *lib.* and also shall incurr the Pain of 100 *lib.* to be paid to him that

that will sue for the same against him, his Executors or Administrators for this Cause, by way of Action of Debt, with his Costs in this behalf expended, without waging of Law of his Demand, or having *Essoin*.

By Stat. 10 and 11. W. III. 7. it is enacted that the Sheriff or other Officer having the Execution and Return of any Writ of Parliament, shall, on or before the Day that any Parliament shall be called to meet, and withall convenient Expedition *not exceeding Fourteen Days* after any Election, made by vertue of any new Writ, either in Person, or by his Deputy, make Returns of the same, to the Clerk of the Crown in the High Court of *Chancery*, to be by him sealed, &c. and shall pay to the Clerk of the Crown 4 sh. for every Knight of the Shire, and 2 sh. for every Citizen, Burgess, &c. which the Sheriff, &c. shall charge to the King, and have allowed upon his Account.

Every Sheriff or other Officer or Officers aforesaid, who shall not make the Returns according to the true Intent and Meaning of this Act, shall forfeit for every such Offence the Sum of 500 lib. one Moytie whereof shall be to Her Majesty, and the other to him or them that will sue for the same, to be recovered by Action of Debt, Plaint, or Information, in any of Her Majesty's Courts of Record at *Westminster*, wherein no *Essoin*, Protection or Wager of Law shall be allowed, nor more than one Impurance.

By Stat. 7 and 8. W. III. 7. continued by Stat. 12 and 13. W. III. 5. it is enacted, That all false Returns wilfully made of any Knight of the Shire, Citizen, Burgess, Baron of the Cinque Ports, or other Members to serve in Parliament, are against Law, and are thereby prohibited; and in case that any Person or Persons shall return any Member to serve in Parliament for any County, City, Borough, Cinque-port or Place, contrary to the last Determination in the House of Commons, of the Right of Election, in such County, City, Cinque-port or Place, That such Return so made, shall be, and is adjudged to be, a false Return.

The Party so grieved, to wit, every Person that shall be duly elected to serve in Parliament for any County, City, Borough, Cinque-port or Place, by such false Return, may sue the Officers and Persons making or procuring the same, and every or any of them, *at his Election*, in any of his Majesty's Courts of Record at *Westminster*, and shall recover double the Damages he shall sustain, by reason thereof, together with his full Costs of such Suit.

Any Officer that shall falsly and maliciously return more Persons than are required to be chosen by the Writ or Precept on which any Choice is made, the like Remedy may be had against him or them, and the Party or Parties that willingly procure the same, and every or any of them, by the Party grieved *at his Election*.

All Contracts, Promises, Bonds and Securities whatsoever, made or given, to procure any Return of any Member to serve in Parliament, or any thing relating thereunto, are ordained to be adjudged void; and whoever makes or gives such Contract, Security, Promise or Bond, or any Gift or Reward to procure such false or double Return, forfeits the Sum of 300 *lib.* one Third part thereof to be to his Majesty, another Third part thereof to the Poor of the County, City, Borough, or Place concerned, and one Third part thereof to the Informer, with his Costs to be recovered in any of his Majesty's Courts of Record at *Westminster*, by Action of Debt, Bill, Plaint, or Information, wherein no *Essoin*, Protection or Wager of Law, shall be allowed nor more than one Imparlance.

Every Information or Action brought upon this *Stat. 12 and 13. W. III. 5.* must be brought within the Space of Two Years after the Cause of Action shall arise, and not after.

By *Stat. 33. H. VI. 15.* it is ordained, That every Sheriff, after the Delivery of any Writ of Election to him made, shall make and deliver, without Fraud, a sufficient Precept under his Seal, to every Mayor or Bailliff; or to Bailliffs or Bailliff, where no Mayor is, of the Cities and Burghs within his County,

ty, re-citing the said Writ, commanding them by his Precept; if it be a City, to choose by the Citizens of the same City, *Citizens*; and in the same Manner and Form, if it be a Burgh, by the Burgeses of the same, to come to the Parliament.

And by *Statute 7. and 8. William III. 25.* when the Lord Chancellour, Lord Keeper, or Lords Commissioners of the Great Seal, for the Time being, shall issue out Writs for summoning Members to attend in Parliament, the several Writs shall be delivered to the proper Officer to whom the proper Execution thereof doth properly appertain, and to no other Person whatsoever: And every such Officer, upon Receipt of the same Writ, shall upon the Back thereof, indorse the Day he received same; and shall forthwith, upon Receipt of the Writ, make out the Precept or Precepts to each Burrow Town corporate, Port or Place within his Jurisdiction, where any Member or Members are to be elected to serve in a new Parliament, or to supply any new Vacancy in Parliament; and within Three Days after the Receipt of the said Writ of Election, shall, by himself, or proper Agent, deliver, or cause to be delivered, such Precept or Precepts to the proper Officer of any such Burrow Town, corporate Port or Place within his Jurisdiction, to whom the Execution of such Precept does belong or appertain; and to no other Person whatsoever.

And when the Mayor or Bailiffs return the Precept to the same Sheriff by Indentures, every Sheriff thereupon must make a good and faithful Return of every such Writ, and of every Return by the Mayors, or Bailiff or Bailiffs, where no Mayor is, to him made.

And every Sheriff, at every time he doth contrary to this Statute, or any other Statutes for the Election of Knights, Citizens and Burgeses to come to Parliament, before this time made, shall incur the Pain contained in the Statute made in the 8th Year of *Henry VI.* and moreover, shall forfait and pay to every Person hereafter chosen, Knight, Citizen or Burges

in his County, to come to any Parliament, and not duly returned, or to any other Person, which in default of such Knight, Citizen or Burghers, will sue, 100 *lib.* whereof every Knight, Citizen and Burghers so grieved, severally; or any other Person which in their default will sue, shall have his Action of Debt against the said Sheriffs, or his Executors or Administrators, to demand and have the said 100 *lib.* with his Costs spent in that Case; and that in such Action, taken by vertue of this Statute, the Defendant shall not wage his Law of the Demand foresaid in any ways; and that no Defendant in such Action, shall have any *Essoin*.

When the Sheriff maketh not Election in a full County Court, and a good Return, accordingly he forfeits 100 *lib.* to the King, and 100 *lib.* more to him that will sue to be recovered by Action of Debt, with Costs, in manner fully mentioned in *Statute 23. Henry VI. 15.* by which Law it is also provided, That every Knight, Citizen or Burghers, to come to any Parliament to be holden, in due Form chosen; and not returned as aforesaid, is to begin his Action of Debt as before, within 3 Months after the same Parliament commenced, to proceed in the same Suit effectually without Fraud: And if he do it not so, another that will sue, shall have the same Action of Debt, as it is before said, and shall recover the same, with his Costs spent in this behalf, in Manner and Form aforesaid: So that no Defendant in such Action shall wage his Law, nor be essoined in any ways, as afore is said; and that such Persons shall be in the Actions foresaid, as in a Writ of Trepass done against the Peace of the Common Law.

Not only the Queen's Courts of Records at *Westminster*, may judge Actions against Sheriffs and others concerned in making undue Returns; but also by *Statute 11. Henry IV. 1.* it is ordained, That the Justices assigned to take Assizes, shall have Power to enquire at their Sessions of Assizes of such Returns made; and if it be found by Inquest and due Examination before the same Justices, that any Sheriff hath made a
Return

Return contrary to the Statutes, he shall incur the Penalty of 100 *lib.* to be paid to the King, and the Knights unduly returned, shall lose their Wages. And by *Statute 6. Henry VI. 4.* all Sheriffs shall have their Answer and Traverſes to Inqueſts and Offices, before any Juſtices of Affize to be taken; and the ſaid Sheriffs ſhall not be endamaged into the King or his Succeſſors for any ſuch Inqueſt taken, until they be duly convicted in Form of Law. And whereas by *Stat. Henry VI. 7.* the Sheriffs are to return ſuch Knights of the Shire as are choſen by the Majority of theſe that can expend 40 Shil. by Year, and above: It is thereby enacted, That if any Sheriffs return Knights to the Parliament, contrary to that Ordinance, the Juſtices of Affizes in their Sessions, ſhall have Power thereof to enquire; and if by Inqueſt the ſame be found before the Juſtices, and the Sheriff thereof be duly attainted, he ſhall incur the Penalty of 100 *lib.* to be paid to the King; and alſo that he have Imprisonment by a Year, without being let to Main-Prife or Bail; and the Knights unduly returned, ſhall loſe their Wages.

Nevertheless, the Sheriff nor his Under-Sheriffs in any County or City, nor the Mayor, Bailiff, Conſtable, Protreeve, or other Officer or Officers of any Burgh, Town corporate, Port or Place to whom the Execution of any VVrit or Precept for electing Members to ſerve in Parliament, doth belong or appertain, ſhall give, pay, receive or take any free Reward or Gratuity whatſoever, for the making out Receipt, Delivery, Return or Execution of any ſuch Writ or Precept.

The Duty of the Magiſtrates of Cities or Burghs, is to give due Obedience to the Sheriff's Precepts, iſſued out for chuſing a Citizen or Burgeſs to come to Parliament, and by making in due time, by themſelves or their Clerk, to the Sheriff of the County, a proper Return of his Precept, with the Name of the Citizen or Burgeſs elected.

By *Stat. 7 and 8. W. III. 25.* the proper Officer of every Burgh or Town Corporate, to whom the Execution of the
Shc-

Sheriff or other Officer his Precept for chusing Citizens or Burgeses to serve in Parliament is directed, so soon as he receives the Precept, shall, upon the back thereof, indorse the Day of his Receipt thereof, in the presence of the Party from whom he received such Precept; and shall forthwith cause Notice to be given of the Time and Place of Election, and shall proceed to Election thereupon within the space of 8 Days next after the Date of this Receipt of the said Precept, and give 4 Days Notice, at least of the Day appointed for the Election.

And by Stat. 23. Henry VI. 15. it is enacted, That the Mayors or Bailliffs make Election for a Citizen or Burges, and return lawfully the Precept to the same Sheriff, by Indentures betwixt him and them, to be made of the said Elections; and of the Names of the said Citizens and Burgeses, by them so chosen: And at every time that any Mayor and Bailliff or Bailliffs or Bailliff, where no Mayor is, shall return others than those chosen by the Citizens or Burgeses of the Cities or Burrows where such Election be, or shall be made, shall incur and forfait to the King 40 *lib.* and moreover, shall forfait and pay to every Person chosen a Citizen or Burges to come to Parliament, and not by the same Mayor and Bailliff, or Bailliffs or Bailliff, where no Mayor is, returned, or any other Person, which in default of such Citizen or Burges so chosen will sue, 40 *l.* whereof every one of the Citizens and Burgeses so grieved severally, or any other Person which in their default will sue, shall have his Action of Debt against every one of the said Mayor and Bailliff, or Bailliffs or Bailliff, where no Mayor is, against their Executors or Administrators, to demand & have of every of the said Mayors and Bailliffs, or Bailliffs or Bailliff, where no Mayor is, 40 *lib.* with his Costs in this Case expended.

And that in such Action of Debt, taken by Force of this Statute, no Defendant in any ways shall wage his Law of the said Demand, nor have an *Essoin*.

The other Laws above-cited, prohibiting and punishing false or wrongrous, and double Returns, relate to Mayors, Provosts and Bailliffs of Cities and Burghs, as well as to Sheriffs.

As to the Royal Burrows of *Scotland*, it is by *Statute 6. An. 6.* enacted, That the Sheriff of the Shire of *Edinburgh*, shall, on the Receipt of the said Writ of Summons of Parliament, directed to him, furthwith direct his Precept to the Lord Provost of *Edinburgh*, to cause a Burgefs to be elected for that City.

After the Election of the Member of Parliament, chosen by the Magistrates and Town-Council of *Edinburgh*, the common Clerk of the City shall certify the Name of the Member elected, to the Sheriff of *Edinburgh*, who shall annex it to his Writ, and return it with the same, into the Court from which the Writ issued.

As to the other Royal Burghs divided into 14 Classes or Districts, the Sheriffs or Stewarts of the several Shires and Stewartries, shall, on the Receipt of their several Writs, direct their several Precepts to every Burgh within their respective Shires or Stewartries; reciting therein the Contents of the Writ, and the Date thereof: And commanding them furthwith to elect each of them a Commissioner, as they used formerly to elect Commissioners to the Parliament of *Scotland*; and to order the said respective Commissioners to meet at the presiding Burgh of their respective District, (naming the said presiding) upon the 30th Day after the Day of the Test of the Writ, unless it be on the *Lord's Day*, commonly called *Sunday*, and then the next Day after; and then to chuse their Burgefs for the Parliament: And the common Clerk of the then presiding Burgh, shall immediately after the Election, return the Name of the Person so elected, to the Sheriff or Stewart of the Shire or Stewartry wherein such presiding Burgh is, who shall annex it to his Writ, and return it with the same, into the Court from whence the Writ issued. And incase a Va-

cancy shall happen in Time of Parliament, by the Decease or Legal Incapacity of any Member, a new Member shall be elected in his Room, conformable to the Method herein, before appointed, and in case such Vacancy be of a Representative for any one of the said 14 Classes or Districts of the said Royal Burghs; that Burgh which presided at the Election of the deceased or disabled Member, shall be the presiding Burgh at such new Election.

The Duty of the Clerk of the Crown, with respect to Returns, is defined by *Statute 7 & 8. William III.* 7. which ordains him to enter in a Book kept for the same purpose, every single and double Return of any Member or Members to serve in Parliament, which shall come into his Office, or into his Hands, and also every Alteration and Amendment as shall be made in every such Return; to which Book, all Persons shall have free Access to search and take Copies for reasonable Fees; and the Party prosecuting such Suit, may at any Trial give in Evidence such Book, or a true Copy thereof, relating to such false or double Return, and shall have like Advantage thereby, as if he produced that Record himself; and if the Clerk of the Crown willfully omit to perform his Duty in the Premises, he shall for every such Offence, forfault to the Party grieved, 500 *l.* to be recovered in any Court of Record at *Westminster*, by Action, Bill, &c. wherein no *Essoin* is to be allowed, nor more than one Imparlance.

All Actions hereupon, are to be brought within Two Years after Cause, and not after.

That one may know the several Burghs to which each respective Sheriff or Stewart is to direct his Precepts, I have thought fit to insert the following Table.

An Alphabetick Table of all the Shires or Counties in Scotland, shewing,

Rank in the Roll of Parliament.	Name of the Shire.	Name of the Towns.	Rank in the Roll of Parliament.	Name of the Shire.	Name of the Burgh.
xxviii	A. Aberdeen	{ Aberdeen Inverary Kintore	i	E. Edinburgh	Edinburgh
ix	Air	{ Air Irvin	xxix	Elgin	Elgin Forreſs
xxi	Argyle	{ Cambletonn Inveraray		F.	St. Andrew's Anſtruther Eaſt. Anſtruth. Wel. Bruntisland Couper Crayl Dumfermling Dyſert Innerkeithing Kilrenny Kinghorn Kirkaldy Pittenweem Queensferry
xxv	B. Bamff	{ Bamff Cuſſen	xxii	Fife	Aberbrothock Brichen Dundee Forfar Montroſe.
iii	Berwick	Lauder			
xii	Bute	Rothſay			
xxviii	C. Cathneſs	{ Week	xxiv	Forfar	
xxx	Clackmannan				
xi	D. Dumbarton	Dumbartoun Annan		H. Haddington	Dumbar Haddingtoun North Berwick
vii	Dumfries.	{ Dumfries Locmaben Sanquhar.	ii		

Rank in the Roll of Parlia- ment.	Name of the Shire.	Name of the Town of Burgh.	Rank in the Roll of Parlia- ment of Scotland	Name of the Shire.	Name of the Burgh or Town.
	I.			R.	
xix	Inverness.	Inverness.	xiii	Renfrew	Renfrew.
	K.		xxxi		
xvii	Kincardin	Inverberwy	iv	Ross	Dingwall Fortrose Tain.
xxii	Kinross			Roxburgh	Jedburgh
	L.		v	S.	
xxvi	Kircudbright	Kircudbright	xxvii	Selkirk	Selkirk
vii	Lanerk.	Glasgow Lanerk Rutherglen.	xiv	Sutherland	Dornock
xv	Linlithgow	Linlithgow	ix	Stirling	Stirling.
	N			W.	
xx	Nairn.	Nairn.		Wigton	Newgalloway Stranraer Whithorn Wigton
	O.			Z.	
xxx	Orkney and Zetland.	Kirkwall.	xxx	Zetland and Orkney.	Kirkwall.
	P.				
vi	Peebles	Peebles			
xvi	Perth.	Calross Perth			
					TIT.

TITLE VI.

Of the Duty of the Person elected, and of what he is to do before he can warrantably sit and Vote in either of the Houses of Parliament.

TH E Person elected to be a Member of the House of Commons, after the Election, is, by *Stat. 4. and 5. An. 8.* prohibited to accept of any Office or Profit from the Crown during such time as he shall continue a Member; otherways his Election shall be, and by that Act is declared to be void, and a new Writ shall issue for a new Election, as if such Person, so accepting, was naturally dead.

Nevertheless such Person shall be capable of being again elected, as if his Place had not thus become void.

If Members by Law incapacitate, disabled and declared incapable to sit in Parliament, shall be returned; their Election is not only void, but if they presume to sit and vote in the House of Commons, they shall forfeit 500 *lib.* in manner mentioned in the forecited Statute 4 and 5. *An. 8.* and as is declared in the preceeding Title, which shews the Qualification of the Person eligible.

It is by *Stat. 5. Eliz. 1.* enacted, That every Person who hereafter shall be elected or appointed a Knight, Citizen or Burgess, for any Parliament to be holden, shall, before he enter into the Parliament-House, or have any Voice there, openly receive and pronounce the Oath of Supremacy; and that he who shall enter into the Parliament-House without taking the said Oath, shall be deemed no Knight, Citizen, Burgess nor Baron for that Parliament, nor shall have any Voice; but shall

shall be to all Intents, Constructions and Purposes, as if he had never been returned nor elected Knight, Citizen, Burgeses or Baron for that Parliament, and shall suffer such Pains and Penalties as if he had presumed to sit in the same, without Election, Return or Authority.

And the Stat. 7. Ja. I. enacteth, That all and every the Knights, Citizens, Burgeses and Barons of the Five Ports of the Commons House of Parliament, at any Parliament or Session of Parliament, to be assembled before he, or they, shall be permitted to enter into the said House, shall make, take and receive the Oath of Obedience mentioned in the Statute of 3. Ja. I. ch. 4. commonly called, *The Oath of Allegiance*.

As also, it is by 30. Ch. II. 1. statuted, That none who shall be a Member of the House of Commons, shall vote in the House of Commons, or sit there, during any Debate in the said House of Commons, after their Speaker is chosen, until such Member shall from time to time, and in manner following, first take the several Oaths of Allegiance and Supremacy, and make, subscribe, and audibly repeat the Declaration (in this Act contained, commonly called *The Test*, which see page 10.) which said Oaths and Declaration, shall be in this and every succeeding Parliament, solemnly and publicly made and subscribed, betwixt the Hours of 9 in the Morning and 4 in the Afternoon, by every such Member of the House of Commons, at the Table, in the Middle of the said House; and whilst a full House of Commons is there duly sitting, with their Speaker in his Chair; and that the same be done in the House in such like Order or Method as the House is called over by.

If any Member of the House of Commons presumes to do any thing contrar to this Act, every Member so offending, shall from thenceforth be deemed and adjudged a Popish Recusant, convict to all Intents and Purposes whatsoever, and shall forfeit and suffer as a Popish Recusant convict, and shall be disabled to hold or execute any Office or Place of Profit or Trust, Civil or Military, in any of his Majesty's Realms of England or Ire-
land,

land, Dominion of Wales, or Town of Berwick upon Tweed, or in any of his Majesty's Realms, Islands, or Foreign Plantations, to the said Realms belonging; and shall be disabled from thenceforth, to sit or vote in any Parliament, or to sue or use any Action, Bill, Plaint, or Information in Course of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian of any Child, or Executor or Administrator of any Person, or capable of any Legacy, or Deed of Gift; and shall forfeit for every wilful Offence against this Act the Sum of 500 lib. to be recovered or received by him or them that will sue for the same, and to be prosecuted by any Action of Debt, Suit, Bill or Plaint or Information, in any of his Majesty's Courts of Westminster, where no Effoin, Protection or Wager of Law shall ly.

It shall be Lawful to and for the House of Commons, as often as they shall see Occasion, to order or cause all or any of the Members of Parliament, openly in their House, to take the said Oaths, and to make and subscribe the said Declaration, at such times and in such manner as they shall appoint: And if any Member or Members of the House of Commons shall, contrary to such Order made by their House, wilfully presume to sit therein, without taking the said Oaths, and making and subscribing the said Declaration, every such Member or Members of the House of Commons so presuming to sit, shall be adjudged, and is thereby declared to be incapable and disabled in Law, to all Intents and Purposes whatsoever to sit in the said House of Commons, or give any Voice therein during that Parliament.

And in every Case, where any Member or Members of the House of Commons, shall by vertue of this Act, be disabled to sit or vote in the House of Commons; then, and in every such Case, without any further Conviction or other Proceedings against such Member or Members, the Place or Places for which they or either of them were elected, is thereby declared void, and a new Writ or Writs shall issue out of the High Court of Chancery, by Warrants from the Speaker of the House of

of Commons for the Time being, and by Order of the said House, for the Election of a new Member or Members to serve in the House of Commons, in the Place or Places of such Member or Members so disabled, to all Intents and Purposes, as if such Member or Members were Naturally dead, &c.

During the taking and subscribing the Oaths and Declaration, all other Proceedings in Parliament are to cease, and the Oath, Declaration and Subscription, with a Schedule of the Names of the Persons taking and subscribing them, are ordered to be entered and filed in Parliament Rolls provided by the Clerk of the House, and each Member to pay only 12 Pence for each such Entry.

By *Stat. 1. W. and M. ch. 1.* it is enacted, That the Act made in the 30th Year of K. *Charles II.* and all other Acts of Parliament, as to so much of the said Act or Acts only as concerns the taking the Oaths of Supremacy and Allegiance, or either of them in the said Acts respectively mentioned, by any Member of either House of Parliament, with relation to their sitting and voting there, are thereby repealed to all Intents and Purposes, any thing in the said received Act or Acts to the contrary notwithstanding. And in all future Parliaments, the Oaths of Allegiance and Supremacy, with the Declaration made in the 30th Year of K. *Charles II.* set down *pag. 9 and 10.* are ordered to be taken, made subscribed and repeated, by every Member of either House, within the Time, and in the same Manner and Form, and under the Penalties and Disabilities, as the said Oaths of Allegiance and Supremacy, and the said Declaration, by the said Act of the 30. Year of K. *Ch. II.* are limited, ordained and appointed, to be taken, made, subscribed and repeated, and not at any other Time, or in any other Manner, to enable them to sit and vote in Parliament any thing in the said Act or Acts, or in any of them to the contrary notwithstanding.

By *Stat. 13 and 14. W. III. 6.* it is enacted, That no Peer shall vote, make his Proxy, or sit in the House during any
De-

Debate, until such Peer take the Oath of Abjuration, and subscribe the same betwixt the Hours of Nine and Four in the Afternoon: Which Oath is to be taken by every Peer, at the Table, whilst a full House is there, and the Speaker in his Place.

As also, it is enacted, That none who shall be a Member of the House of Commons, shall Vote or Sit there, during any Debate in the said House, after their Speaker is chosen, until such Member shall from Time to Time take the said Oath, and subscribe the same in Manner following, that is to say, The said Oath shall be in every Parliament solemnly and publicly made and subscribed, between the Hours of Nine in the Morning, and Four in the Afternoon, by every such Member of the House of Commons, at the Table in the middle of the said House, and whilst a full House of Commons is there duly sitting, with their Speaker in his Chair.

If any Peer Vote or make his Proxy, and if any Member of the House of Commons shall presume to Vote, not having taken the said Oath, and subscribed the same as aforesaid, every such Peer and Member so offending, shall from thence be deemed and adjudged a Popish Recusant, convict to all Intents and Purposes whatsoever; and shall forfait and suffer as a Popish Recusant convict, and shall be disabled to hold or execute any Office or Place of Profit or Trust, Civil or Military, in any of his Majesty's Realms of *England* or *Ireland*, Dominion of *Wales*, or Town of *Berwick*, upon *Tweed*, or in any of his Majesty's Islands, or foreign Plantations belonging to the said Realms; and shall be disabled from thenceforth to make Proxy, Sit or Vote in either House of Parliament, or to sue or use any Action, Bill, Complaint or Information, in Course of Law, or to prosecute any Suit in any Court of Equity, or to be Guardian to any Child, or Executor or Administrator of any Person, or capable of any Legacy or Deed of Gift: And shall forfait for every willful Offence against this Act, the Sum of 500 *l.* to be recovered and received by him or them, that shall

shall sue for the same; and to be prosecuted by any Action of Debt, Suit, Bill, Plaint or Information, in any of his Majesty's Courts of *Westminster*, wherein no *Essoin*, Protection or Wager of Law shall ly.

TITLE VII.

Of Absence from Parliament.

EVERY Member of Parliament is obliged to give Suit and Presence at the Parliament, and to attend daily all the Diets thereof, from the first Day of its downsitting, to the last Day, and till it rise, except they be excused.

By *Act 52. Parl. 3. James I. 1425.* it is statuted, That all Prelates, Earls, Barons and Freeholders of the King, within the Realm, since they are holden to give Presence to the King's Parliament and General Council, should from thenceforth be holden to compear in proper Person, and not by a Proctor, except the Proctor alledge and prove a lawful Cause of Absence. It seems, that before this Time, personal Attendance at Parliaments was not required; no more now it is at the King's Head-Courts in the Shire, and that in both, a Letter of Acturney was admitted, not only to excuse Absence, but the Acturney might do at the General-Council, every Thing competent to the Constituent; and that by this Act, the Proctor's Power was restricted.

The Unlaw or Pain of unexcused Absence from Parliament, before and in the Reign of King *James I.* was 10 *l. Scots*, (a very great Sum at that Time); and this is gathered from the Titles of his Sixth, Seventh and Eight Parliaments, *Annis 1426. 1427. 1428.* as follow ——— *Comparantibus omnibus illis qui debuerunt & voluerant commodè interesse, absentibus quibusdam autem, quorum quidam aliqui legitime excusati fuerunt, alii* verò

verò quasi per contumaciam se absentaverunt, quorum quisque adjudicabitur in amerciamiento decem librarum.

By Act 34. Parl. 11. James VI. anno 1587. in case any Earl, Lord or Baron of Parliament, Prelate or Burgh, being lawfully warned, absent themselves from Parliament, without lawful and sufficient Excuse, admitted and allowed by the Lords of the Articles, a pecunial Pain shall be modified and ordained to be taken of the Absents, in manner following: From every Earl 300 *l.* from every Lord 200 *l.* from every Prelate 100 *l.* from every Burgh 100 Merk.

Such as did not accompany the King's Majesty on Horseback decently, with Foot-Mantles, from his Highness's Palace, to the Parliament-House, are by that Act ordained to be reputed for Absents, and to pay accordingly.

For leavying this Fine, Letters to poind and distrenzy, the Lands and Goods of the Absents are ordained to be directed, or to pay the Fine within 10 Days, under the pain of Rebellion; and if they fail, of putting them to the Horn.

These Penalties were by the Treasurer collected for the Sovereign's use.

By Act 7. Parl. 22. James VI. anno 1617. this fore-cited Act is ratified, with this Addition, That the Unlaw of Commissioners of Barons, for absence from Parliaments, is appointed to be 100 *l.* (for that was omitted out of the preceeding Law) And it is further declared, That no Excuse for absence from Parliament, should be received or admitted, except the Licence was granted by the King, under his Note or Subscription, if He was in Scotland at the time, and in His absence, by the high Commissioner of Parliament; and in case of the said Commissioner's absence, by the Lord Chancellour, and Lords of Secret-Council, to be produced judicially, the First Day of the Fencing of each Parliament, to the Clerk-Register or his Deputes.

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*At this Time, there were no Dukes, Marquises or Viscounts in Scotland.

By the same Act it is declared, That it should be lawful to any Duke, Marquis, Earl, Viscount, Lord or Prelate within Scotland, being absent from Parliament, and lawfully excused, to send a sufficient Power, subscribed with their Hands, to any one of that Estate, having Place and Vote in Parliament, who shall be admitted to Reason and Vote for the Person absent, during the whole Diets of Parliament.

The ancient Privilege which the whole Barons had, before the Year 1425. was by this Act confirmed to the Nobility & Prelates, with a Limitation appointing the Proxies to be named out of the Two Kingdom, in the Year 1707. this part of the Act was gone into disuse.

By an unprinted Act, *Parl: 1. Session 2. Charles II.* entitled, *Act concerning Members of Parliament who do not attend*, It is declared, That each Nobleman absent from the Parliament, shall be lyable to the Penalty of 1200 lib. Scots; each Commissioner for a Shire, to the Sum of 600 lib. Scots; and each Commissioner for a Burrow, to the Sum of 200 lib. Scots; and that without prejudice of what further Censure the Parliament shall think fit.

And by another unprinted Act in the same Session of Parliament, made for settling the Orders in the Parliament-House, it is appointed, That all Members of Parliament do precisely keep the Diets of Parliament, under the pains following, *viz.* each Nobleman for each Diet's absence without leave, 12 lib. Scots, each Baron 6 lib. and each Burgefs 3 lib. and that they pay the just Half of their Penalties for each Diet they come in *sero*, after the calling of the Rolls of Parliament.

By Act 1. *Parl: 1. Session 3. William and Mary*, dated September 10th 1690, these Two Acts are ratified, and ordained to be put in Execution: And it is thereby further declared, That Members of Parliament being within the Kingdom, and not having a reasonable Excuse, who shall be absent upon the First Day of the Parliament, shall be reputed Absents from Parliaments, and lyable to the Penalties imposed on such:

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The Receiver General of the Crown Rents and Casualties, is appointed to receive the respective Penalties of the Absents from Parliaments, according to a List to be signed and given by the Clerks.

The Clerks of the Session, as Deputes to the Clerk of Register in Parliament, are ordained to make Sederunts of each Diet of Parliament, and to mark these who are absent; that they or any whom they appoint, may exact from Absents, from particular Sederunts, the Penalties, conform to this and the foresaid: And they are allowed to apply the same to their own Use, as a Reward given to them for making the daily Sederunts.

This was the Law of *Scotland* before the Union; but the Law of *South-Britain*, which will be the Rule in this Case of Absence, from either Houses of Parliament, is as follows:

Every Lord Spiritual or Temporal, and every Knight, Citizen or Burges, shall, upon Summons, come to the Parliament, except he can reasonably and honestly excuse himself; or else he shall be amerced, &c. that is, respectively a Lord by the Lords, and one of the Commons by the Commons.

By *Statute 5. R: 2. Ch: 4.* the King doth Will and Command: And it is assented in the Parliament, by the Prelates, Lords and Commons, That all and singular Persons and Commonalties, which from thenceforth shall have the Summons of Parliament, shall come to the Parliaments in the manner as they are bound to do, and have been accustomed within the Realm of *England*, of old Times.

And if any Person of the same Realm, which from thenceforth shall have the said Summons, (be he Knight of the Shire, Citizen of City, Burges of Burgh, or other singular Person or Commonality) do absent himself, and come not at the said Summons, (except he may reasonably and honestly excuse him to the Lord the King) he shall be amerced, and otherwise punished, according as in old Times hath been used within the said Realm, in the said Case.

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By Statute 6. H. 8. ch: 16. it is enacted, That from henceforth no Knights (of Shires) Citizens, Burgeses and Barons of Cinque-ports, nor any one of them that shall be elected to come, or in any Parliament, do depart from the Parliament, nor absent himself, till the Parliament be fully finished, ended or prorogued, except he or they so departing, have Licence from the Speaker and Commons in the said Parliament assembled; and the same Licence be entered of Record, in the Books of the Clerk to the Parliament, appointed for the Commons House, under the pain of losing their Wages.

TITLE VIII.

Of the Fees of Members of Parliament, and how they are assessed and levied.

IT being just, that those who shall be cholen Commissioners to Parliament, and who shall accordingly attend Her Majesty and the Kingdom's Service in Parliament, have Allowance of their Expence*; therefore by Act 101. Parl: 7. James I. anno 1427. it is statuted, That the Commissioners for Shires shall have their Costs and Expences paid to them by the Freeholders of the Shires whom they Represent, and who formerly owed Compearance in Parliament, and that out of their Rents proportionably.

And by Act 114. Parl: 11. James VI. 1587. it is decerned, That all Freeholders be taxed for the Expence of the Commissioners of the Shires passing to Parliament: And that the Lords of Council and Session shall Yearly direct Letters at the In.

* Act 35. Parl: anno 1681.

Instance of the Commissioners, for convening the Freeholders to make the Taxation of the Expence of the Commissioners; and that for Payment thereof, when taxed, Letters of Horning and Poinding be directed, upon a Charge of Six Days warning.

But this Taxation was uncertain and undetermined, till by *Act 35. Parl. 1. Session 1. Charles II. anno 1661.* the States of Parliament modified and appointed 5 lib. Scots of Daily Allowance to every Commissioner, from any Shire, including the First and Last Days of the Parliament; together with Eight Day for their coming, & as much for their Return, to the furthest of *Cathness* and *Sutherland*, and proportionably at nearer Distance. And that the whole Freeholders, Heritors and Liferenters, holding of the King and Prince, shall accordingly to the Proportion of their Lands and Rents lying within the Shire, be lyable and obliged in Payment of the said Allowance, excepting Noblemen and their Vassals: For Payment whereof, all Execution by Horning, Poinding and Quartering, as is used for Payment of Excise, is appointed to pass; and the Daily Allowance is to be accordingly, as the Time and Days of the Parliament shall be attested under the Hand of the Clerk Registers: But this daily Allowance is only given for the Days that the Commissioners attended and kept the Diets of Parliament; for by *Act 1. Parl. 1. Session 3. William and Mary, 1690.* the Clerks of the Session, as Deputes to the Clerk of Register in Parliament, are ordained to make Sederunts of each Diet of Parliament, and to mark these who are absent; and the Clerk of Register is ordained to give to the Commissioners for Shires and Burghs, who require Certificates of their Attendance in Parliament, for exacting from the Shires and Burghs which they Represent, their Fees, conform to the said Sederunt.

And by *Act 21. Parl. 3. Ch. II. in 1681.* it is statuted, That the whole Heritors, Liferenters, and Wadsetters within each Shire or Stewartry, shall contribute for the Charges of the

Commissioners thereof, according to their Valuation, except these who hold of Noblemen, or are Proprietars of Lands belonging to Burghs-royal in Burgage.

In *South-Britain*, the Wages and Expence of the Members of Parliament in the House of Commons are assessed and levied by the Laws following. By *Stat. 12. R. 2. 12.* the levying of the Expence of Knights coming to Parliament, is appointed to be made as in time then past; and if any Lord or other have purchased Lands or other Possessions that were wont to be contributory to such Expenses, they shall still continue to be so, notwithstanding such Purchase.

The Fee of a Knight of any County, hath Time out of Mind been 4 *sh. per diem*, as is particularly expressed in many Records; and the Fee of every Citizen and Burghers is 12 *sh. per diem*.

And by *Stat. 23. Henry VI. 1.* the Sheriff in the next County-Court, after he shall receive the Writ for assessing the Wages of the Knights of Parliament, is appointed to make Proclamation, That the Coroners, chief Constables, Bailiffs, and all others (that will) appear at the next County-Court, to assess the same Wages; at which last County the Sheriff and other Officers shall be present in proper Person, in Pain that every One that makes Default shall forfeit 40 *sh.* and then the Sheriff shall in full County assess every Hundred by it self, and every Town in each Hundred by it self, so as the Sum assessed upon all the Hundreds, exceeds not the intire Charge of the County, nor that Assessed upon all the Towns in each Hundred, exceed not the Sum charged upon the Hundred in which they ly.

The Sheriff is ordained to levy the said Assessments as speedily as may be after they are so assessed, and to deliver them to the Knights; and that the same shall not be levied but in Places where the same hath been formerly levied, and thereafter in every Writ for levying such Wages, the *Stat. 23. Henry VI. 10.* is to be insert.

If the Sheriff or other Officer levies more than is assessed, he forfeits 20 lib. to the Queen, and 10 lib. to the Prosecutor; for Recovery of which 10 lib. the Prosecutor is to have a *Scire facias*; and if the Defendant make Fault and appear and is afterwards convict, he the Prosecutor shall recover the 10 lib. to his own Use (over and above the said 20 lib.) and besides Treble Damages for Costs of Suit.

Justices of both Benches, Justices of Assize, Goal Delivery and Peace, have Power to hear and determine those Abuses, as well at the Suit of the King, as for the Party.

The Stat. 35. Hen. VIII. 2. mentions, That whereas, Burghs and Burghesses in Parliament of *England* and *Wales* have used to have allowed them, viz. the Knights 4 sh. and the Burghesses 2 sh. a Day or more, during the Parliaments, and their reasonable time of coming to and returning from the Parliament, together with their Costs of Writs and other ordinary Fees and Charges; therefore it is ordained, That the Sheriffs of all the Twelve Shires in *Wales* and the County of *Monmouth*, shall have Power to levy the saids Fees of the Inhabitants of these Shires and Counties, and shall pay them to the Knights in two Months after the saids Knights shall have delivered unto them their Writs *de solutione feodi Militis Parliamenti*, in Pains to forfeit 20 lib. to be recovered by Bill. Plaint, &c. and to be divided betwixt the King and the Prosecutors; and for every Month that such Default is made after the saids two Months, 20 lib. more to be levied, as aforesaid. The head Officers also of the Cities and Burroughs in the saids Twelve Shires and County, shall levy and pay their Burghesses Wages and Fees within the like time, after the Writs *de solutione feodi Burgens Parliamenti* are delivered unto them, upon the like Pains to be levied of the Goods and Cattels of such Head Officers.

The Justices of Peace in each Shire and County, have power to Tax every City and Burgh, in the several Counties where they Inhabite, respectively, towards the Wages of the Burghesses within the Shire & Towns; which Taxes shall be again

rated upon the Inhabitants of each such City and Burgh, by Four or Six discreet and substantial Burgeſſes there ; and then levied and paid by the Head-Officers unto the Burgeſſes of Parliament for the ſaid Shire-Towns, in Manner and Form aforeſaid, and upon like Pains.

My Lord chief Juſtice *Coke*, in the 4th Part of his Inſtitutes of the Laws of *England*, concerning the Jurisdiction of Courts, ſays, That in the firſt Year of the Reign of *Richard II.* the Commons Petitioned in Parliament, That all Perſons having *Lay Fee* might contribute to the Charge of the Knights, and to all Tailages, and that the King answered, The Lords of the Realm will not loſe their old Liberties. Alſo he obſerves, there is a Writ in the Register, *De expenſis militis non levandis ab hominibus de antiquo Domino, nec ab natiuis.* And that there are other Diſcharges.

By *Stat. 6. Hen. VIII.* it is enacted, If any Knight, Citizen or Burgeſſ depart from the Parliament without the Licence of the Speaker and Commons in Parliament aſſembled, to be entered upon Record in the Book of the Clerk to the Parliament, he ſhall loſe his Wages.

Any Lord of Parliament by Licence of the Sovereign upon juſt Cauſe to be abſent, may make a Proxy to a Lord of Parliament ; but a Knight, Citizen or Burgeſſ of the Houſe of Commons cannot make Proxy, becauſe he is elected and truſted by Multitudes of People.

Thus much, concerning the Fees and Wages of Members according to the Laws in *South* and *North Brſtain*, may ſuffice, and that more eſpecially at this time, when the Commiſſioners for Shires at their Election, are in uſe to renounce all Claims to Fees from the Freeholders ; and when the Opportunity of doing Service to our Country is courted by our Patriots, and when thoſe who are elected by the Barons and others, look on that Honour as a ſufficient Reward in it ſelf.

TITLE IX.

Of the Privilege belonging to Members of Parliament.

BEFORE the St. 12. W. III. 3. The Privilege of Members was indeterminate, lying much in the Custom and Will of either House of Parliament, and only known by them.

The said Act is Entitled, *An Act for preventing any Inconveniences, that may happen by Privilege of Parliament*; and contains Five Paragraphs. The Sense of the First is,

I. That any Person may prosecute any Peer of this Realm or Lord of Parliament or any of the Knights, Citizens and Burgeses of the House of Commons, for the Time being, or their or any of their menial or other Servants, or any other Person intituled to the Privilege of Parliament, in any of the Courts of Record at *Westminster*, or High Court of *Chancery*, or Court of *Exchequer*, or the Dutchy Court of *Lancaster*, or in the Court of *Admiralty*, and in all Causes Matrimonial and Testamentary in the Court of the *Arches*, the Prerogative Courts of *Canterbury* and *Tork*, and the *Delegates*, and in all Courts of Appeal, at any time from and immediately after the Dissolution or Prorogation of any Parliament, until a New Parliament shall meet, or the same be re-assembled, and from and immediately after any Adjournment of both Houses of Parliament, for above the Space of Fourteen Days, until both Houses shall meet or re-assemble; and that the said Courts respectively shall and may after such Dissolution, Prorogation or Adjournment, proceed to give Judgment, and to make Final Orders, Decrees and Sentences, and award Execution

thereupon, any Privilege of Parliament to the contrary notwithstanding.

II. The second Paragraph of this Act contains a Proviso against the subjecting the Person of any Knight, Citizens and Burgeses of the House of Commons, or any other Person intituled to the Privilege of Parliament, to be arrested during the time of Privilege; nevertheless allowing Liberty to any Person or Persons, having Cause of Action or Complaint against any Peer of this Realm, or Lord of Parliament, such Person or Persons, after any Dissolution, Prorogation or Adjournment, as aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, shall and may have such Process out of the Courts of *King's Bench*, *Common Pleas* and *Exchequer*, against such Peer or Lord of Parliament, as he or they might have had against him out of the time of Privilege; and if any Person or Persons, having Cause of Action against any of the said Knights, Citizens or Burgeses, or any other Person intituled to the Privilege of Parliament, after any Dissolution, Prorogation, or such Adjournment, as aforesaid, or before any Sessions of Parliament, or Meeting of both Houses, as aforesaid, such Person or Persons shall and may prosecute such Knight, Citizen or Burgess, or other Person intituled to the Privilege of Parliament, in the Courts of *King's Bench*, *Common Pleas* or *Exchequer*, by Original, Bill and Summons, Attachment, and Distress Infinite thereupon, to be issued out of any of the said Courts of Record, which the said respective Courts are impowered to issue against them or any of them, until he or they shall enter a Common Appearance, or file Common Bail to the Plaintiff's Action, according to the Course of each respective Court; And any Person or Persons having Cause of Suit or Complaint, may, in the Times aforesaid, exhibit any Bill or Complaint against any Peer of this Realm, or Lord of Parliament, or against any of the said Knights, Citizens or Burgeses, or other Person intituled to the Privilege of Parliament, in the High Court of Chancery, Court of *Exchequer*, or Dutchy

Dutchy Court of Lancaster, and may proceed thereupon by Letter or Subpœna, as is usual, and upon leaving a Copy of the Bill with the Defendant, or at his House or Lodging, or last Place of Abode, may proceed thereon; and for want of an Appearance or Answer, or for Nonperformance of any Order or Decree, or for Breach thereof, may sequester the real and personal Estate of the Party, as is used and practised where the Defendant is a Peer of this Realm; but shall not arrest or imprison the Body of any of the said Knights, Citizens and Burgeses, or other privileged Person; during the Continuance of Privilege of Parliament.

III. That in case where any Plaintiff shall, by reason or occasion of Privilege of Parliament, be stayed or prevented from prosecuting any Suit by him commenced, such Plaintiff shall not be barred by any Statute of Limitation, or non-suited, dismissed, nor his Suit discontinued for want of Prosecution of the Suit by him begun, but shall from time to time, upon the rising of the Parliament, be at liberty to proceed to Judgment and Execution.

IV. That no Action, Suit, Process, Order, Judgment, Decree, or Proceeding in Law or Equity against the King's Original and immediate Debtor, for the Recovery or obtaining of any Debt or Duty originally and immediately due or payable unto his Majesty, his Heirs or Successors, or against any Accomptant, or Person answerable to render any Account unto his Majesty, his Heirs or Successors, for any Part or Branch of his or their Revenues, or other Original and immediate Debt or Duty, or the Execution of any such Process, Order, Judgment, Decree or Proceedings, shall be impeached, stayed or delayed, by or under the Colour or Pretence of any Privilege of Parliament: Yet so nevertheless, that the Person or Persons of any such Debtor, Accomptant, or Person answerable or liable to Account, being a Peer of this Realm, or Lord of Parliament, shall not be liable to be arrested or imprisoned, by or upon any such Suit, Order, Judgment, Decree, Pro-

Process or Proceedings, or being a Member of the House of Commons, shall not, during the Continuance of the Privilege of Parliament, be arrested or imprisoned, by or upon any such Order, Judgment, Decree, Process or Proceedings.

V. The last Paragraph contains a Proviso, That neither this Act, nor any thing therein contained, shall extend to give any Jurisdiction; Power or Authority, to any Court to hold Plea in any Real or mixt Action, in any other manner than such Court might have done before the making this Act.

The Lords of Session have (a) found and decerned, That a Member of Parliament, is not oblig'd while the Parliament is sitting, to notice a Process call'd against him, nor at calling the Summons to seek a Sight of it, or to have an Advocate to appear and answer for him.

And in another Case (b), the Lords sist Process against a Member tho' he was not attending, in respect the Parliament was sitting and he represented, that he was bound to go and attend, and claim'd his Privilege.

Yea tho' a Member omit to claim Privilege, and *in initio litis* sist himself, by propounding Defences; yet any time he is allow'd (c) to claim his Privilege, and thereupon propound to stop Process.

During Privilege he cannot be charg'd with Horning, nor can Sentence be pronounc'd against him, his Person or Goods.

Generally the Privilege of Parliament doth hold, except in the Cases of Treason, Felony, and the Peace.

Nevertheless, the Lords (d) did not sustain Privilege to hinder Circumduction of the Term for not reporting a Commission, because the Advocates for the Member had undertaken it; however they superseded Extract till a Time out of Privilege.

Any transgressing against the Privilege of Parliament allow'd to Members, is, by either of the Houses with respect to their several Members, punished according to the heinousness of the Trespass, at the Will and Arbitriment of the respective House.

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(a) In the Case of the Laird and Lady Greenock; 22d June 1709. (b) 15 Nov. 1709 Livingston against the Laird of Grant. (c) Capt. Bruce against Mr. William Dalrymple. (d) 17. Feb. 1708, Grant of Thair-Ilk against the Earl of Sutherland.

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